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(ETHIOPIA *v.* SOUTH AFRICA;
LIBERIA *v.* SOUTH AFRICA)

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AFFAIRES DU SUD-OUEST AFRICAIN
(ÉTHIOPIE *c.* AFRIQUE DÜ SUD;
LIBÉRIA *c.* AFRIQUE DU SUD)

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INTERNATIONAL COURT OF JUSTICE

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VOLUME X

1966

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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VOLUME X



misrepresentation of the Applicants' theory and position, but also from the fact that there is complete lack of clarity in the scheme or plan upon which evidence is proposed to be introduced and a failure, both of timely notice and of substance, in respect of the point, or points, or the issue, or issues, in respect of the evidence to be proffered.

Seventh, the Applicants submit that they have been, and are further, prejudiced by reason of the fact that the qualification of this expert to express an opinion with respect to "the existence of a norm" is a statement of legal theory and legal conclusion more properly the subject of argument than of testimony, and, from what has been stated by counsel in introducing this witness, the witness has not been qualified as a legal expert nor has he been presented as a member of the delegation to present legal arguments in support of the existence or otherwise of a rule of international law.

Finally, the question of the applicability, and again I quote "the applicability of the rule of international law contended for by the Applicants to the Mandate of South West Africa" is a conclusion of law, and not a matter of evidence, as to which this witness has not been qualified as a legal expert, or otherwise competent, to address himself.

For these reasons, the Applicants are constrained to object generally to the line of questioning, which may be adduced or led, or any line of response which may be offered by the witness based upon such a foundation, which, for the reasons which have been mentioned, prejudice the rights of the Applicants in the circumstances. Unless the Court directs otherwise, Mr. President, this general line of objection will be considered by the Applicants as relevant to all questions propounded to this witness, and all answers made by him, reserving, however, with the permission of the Court, the right to comment upon the testimony given at an appropriate time without waiving the objections to relevance thereof.

Thank you, Mr. President.

The PRESIDENT: Mr. Gross, before you resume your seat, could you make clear to the Court the reasons that you advance why no evidence can be given in relation to practice, in terms of establishing, or refuting, the existence of the customary rule of law evidenced by practice in terms of Article 38 (b) of the Statute. Do I understand you to say that no evidence whatever can be adduced before the Court in relation to the general practice existing in other countries?

Mr. GROSS: Mr. President, the Applicants' answer to the President's question is that the Applicants have not taken such a position, but that the Applicants have not understood from the evidence proffered by counsel that the questions to be addressed to this witness, or indeed to any other witness, relate to questions of practice or other facts that are, if I may again quote, as part of the response to the honourable President's question, "whether a norm and/or standards such as contended for by Applicants exist". The existence of a legal norm, or legal rule, or rule of international law, is the question—and sole question—to which these witnesses are said to be offered for evidence of an expert nature. This is in addition to, and cumulative of, the objection by the Applicants based upon the fact that the questions are being led on the basis of a false and inappropriate foundation, which does not state the Respondent's theory of its case or legal position but states, without specification—and from what we have observed from comments made by counsel

during oral proceedings misstates, and misrepresents, the Applicants' true position. It is the confusing aspects of the latter which are of particular concern to the Applicants and which they feel to be prejudicial. If the Respondent desires to proffer evidence based upon, and in support of, its own theory or contentions in the case, it is the Applicants' respectful submission that it should state its theory, and indicate with clarity the points which tend to support its theory. But it is, with respect, evading that responsibility by a line of evidence said to be responsive to a theory and position falsely attributed to the Applicants, which is misunderstood by the Applicants themselves.

The PRESIDENT: Well, Mr. Gross, the witness has taken the affirmation as an expert. I think we first should hear the qualifications of the expert and then, as the evidence is produced, it will be open to you to indicate to what extent you find the questions put unintelligent, unintelligible, argumentative, or embarrassing to the Applicants, by the nature of the question which is put and in relation to the issues in this case. I think that is the proper course to pursue. We first should hear the qualifications and then Mr. de Villiers can, before he goes on to ask any questions in relation to the case, indicate again to the Court, in reply to the observations made by Mr. Gross, the relevance of the evidence.

Mr. DE VILLIERS: Dr. van den Haag, you are an American citizen resident in New York, but you were born, and you grew up, on the continent of Europe. That is correct?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Were you born of Dutch nationality?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: And did you spend the best part of the first six years of your life in Germany?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Did you thereafter move with your parents to Italy?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Did you study in Italy?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: At school and at the university?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Which universities did you attend?

Mr. VAN DEN HAAG: The University of Naples and the University of Florence.

Mr. DE VILLIERS: And did you obtain a law degree?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Did you thereafter study at the University of the Sorbonne in Paris?

Mr. VAN DEN HAAG: Yes, for about a year.

Mr. DE VILLIERS: And then you went to the United States, did you?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: What further studies did you pursue there?

Mr. VAN DEN HAAG: I studied sociology at the University of Iowa and at New York University; received a degree of Master of Arts at the University of Iowa and Doctor of Philosophy from New York University.

Mr. DE VILLIERS: After the law degree you obtained in Italy, your studies were confined to the social sciences were they?

Mr. VAN DEN HAAG: Sociology, and later on also psycho-analysis.
 Mr. DE VILLIERS: And your professional activities for the last 15 years have been entirely in the field of sociology and psychology, together referred to as social philosophy. Is that correct?

Mr. VAN DEN HAAG: That is correct.

Mr. DE VILLIERS: Now you are what is termed a "full professor" in the United States?

Mr. VAN DEN HAAG: At New York University.

Mr. DE VILLIERS: Would you explain to the Court what is meant by a "full professor".

Mr. VAN DEN HAAG: There are, in American universities, instructors, assistant, associate and full professors. Full professor is the highest academic rank to be obtained.

Mr. DE VILLIERS: And you are Professor of Social Philosophy at New York University?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Do you teach elsewhere too?

Mr. VAN DEN HAAG: I am also Lecturer in Psychology and Sociology at the new school for social research in New York.

Mr. DE VILLIERS: Have you taught elsewhere?

Mr. VAN DEN HAAG: I have taught in a number of universities in the United States; I have taught at the University of Minnesota, at the City College of New York, Brooklyn College (in the graduate division), and at a variety of other places, usually as a guest professor, but my normal occupation is as a Professor at New York University.

Mr. DE VILLIERS: Also outside the United States?

Mr. VAN DEN HAAG: I have taught at the American Seminar in Salzburg, Austria, and lectured in Munich and other places.

Mr. DE VILLIERS: Have you delivered lectures as a guest lecturer?

Mr. VAN DEN HAAG: Yes, I have lectured at Harvard University, Yale University, the University of Chicago, Columbia University, and quite a number of others.

Mr. DE VILLIERS: Besides teaching, on what else are you engaged?

Mr. VAN DEN HAAG: I am engaged in the private practice of psycho-analysis.

Mr. DE VILLIERS: Psycho-analysis; and do you write?

Mr. VAN DEN HAAG: I think I do, yes, I have written about 40 articles in the last ten years.

Mr. DE VILLIERS: And you are engaged upon research?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: Could you give the Court an indication of what you have written?

Mr. VAN DEN HAAG: I have written three books: *Education as an Industry*; *The Fabric of Society*, which deals, as the title indicates, with what causes a society to function well or badly; and *Passion and Social Constraint*, which deals with the conflict between social order and individual passion, and the effects this may have on group formation, and I have written a number of articles in sociological and psychological journals, both in the United States and abroad. If you wish I can list a few.

Mr. DE VILLIERS: The work called *The Fabric of Society*, is that used as a textbook?

Mr. VAN DEN HAAG: Yes, sir. It was meant as a treatise but is also used as a textbook rather widely.

Mr. DE VILLIERS: By universities?

Mr. VAN DEN HAAG: Yes, sir. It is used at Harvard.

Mr. DE VILLIERS: Have you written the articles called "Genuine and Spurious Integration" in the anthology *Psycho-Analysis and the Social Sciences*?

Mr. VAN DEN HAAG: Yes, sir. May I mention that this refers to integration among the social sciences—not of people but of concepts.

Mr. DE VILLIERS: And did you also write "Creativity, Health and Art" in *Psycho-Analysis and Contemporary American Culture*?

Mr. VAN DEN HAAG: Yes, sir.

Mr. DE VILLIERS: That was a publication in 1964 by Ruitenbeek?

Mr. VAN DEN HAAG: Yes.

Mr. DE VILLIERS: I believe you have also published articles in a number of journals, may I mention some to you: *The British Journal of Sociology*, *The American Sociological Review*, *The American Journal of Psycho-Analysis*, *Harpers Magazine*, *Law and Contemporary Problems*, *Diogenes*, *Daedalus*, *Encounter*, *Annals of the American Academy of Political and Social Science*, and *Science*?

Mr. VAN DEN HAAG: All of these, yes.

Mr. DE VILLIERS: Have you contributed to encyclopaedias?

Mr. VAN DEN HAAG: Yes, sir. I have written the article called "Sociology" for the *Coates Encyclopaedia* and I have contributed to other encyclopaedias occasionally.

Mr. DE VILLIERS: On what research are you at present engaged?

Mr. VAN DEN HAAG: Well, I have several projects but my major project, which is sponsored by New York University, deals with an attempt to measure the effects of integrated and segregated schooling on Negro pupils under conditions when all variables are controlled, all other circumstances are equal, except for the presence or absence of White co-pupils. This study is undertaken in New York and surroundings, that is in a place where there is no traditional segregation, but the only segregation which exists is *de facto* rather than *de jure*.

Mr. DE VILLIERS: You have for a long time given special attention to a subject called "minority problems", is that not so?

Mr. VAN DEN HAAG: Yes, I teach courses on this subject.

Mr. DE VILLIERS: What does that subject comprise?

Mr. VAN DEN HAAG: In effect, although conceptually it of course applies to all minorities, that is to all groups other than the dominant one in any given society, in effect, in the United States, it deals largely with the problem of relationships between the Negro minority and the White majority.

Mr. DE VILLIERS: Do you belong to a professional society?

Mr. VAN DEN HAAG: I am a Fellow of the Royal Economic Society, and a Fellow of the American Sociological Association, and a number of professional societies.

Mr. DE VILLIERS: Have you appeared as an expert in court on matters concerned with segregation in the United States?

Mr. VAN DEN HAAG: I have appeared in the last two years three times in United States Federal Courts, and once or twice in New York state courts as an expert.

Mr. DE VILLIERS: That concludes the qualification of the witness, Mr. President.

The PRESIDENT: Mr. de Villiers, without repeating what you stated

this morning, would you indicate in reply, shortly, your answer to the observations made by the Agent for the Applicants.

MR. DE VILLIERS: Certainly, Mr. President. I must confess, with respect, to being completely puzzled. My learned friend, Mr. Gross, has fastened on to an expression used in a letter written by our Agent on the subject of witnesses to be called. That letter was written after I had been addressing the Court for some days, in answer to his contentions advanced to the Court under Article 38 of the Statute. I made perfectly plain our position as to the manner in which we would set about answering the Applicants' case as we understood it; and we made it perfectly plain that in so far as the Applicants rely upon a suggested practice of States so as to establish a rule of customary law, in terms of Article 38 (1) (b) of the Statute, we considered that to be a matter of fact to which evidence could be directed.

In the particular letter in which we notified the Applicants yesterday of the matters to which Dr. van den Haag's testimony would be directed, we used this expression:

"He will testify to the effect that the norm and/or standards of non-discrimination or non-separation, as contended for by Applicants, are not applied in some parts of the world."

This is a pure question of fact pertaining to matters of practice of States. And carrying on, Mr. President, on this theme which I explained to the Court before, and which I contend to the Court would be relevant to the inquiry, that if attempted to be so applied it would lead to unfavourable results for the well-being and progress of the peoples concerned. That still remains the gist of the evidence which we propose to tender and I do not know how we could make that plainer.

My learned friend raised two other matters. He raised a number of them but I shall concentrate on these two, and I want to make it plain that I really do not understand what the position is and that I should very much like to have clarity. Perhaps we could then co-operate so as to have a minimum of interruption and objection.

One is, Mr. President, on the suggestion that we are presenting the suggested norm and/or standards of non-discrimination and non-separation to the Court in an erroneous and distorted way. We are in truth doing our very best to understand, from such formulations as we have on record by the Applicants and their representatives, what it is they are contending for as being the content of the suggested norm and/or standards. We are taking their own definitions as they give them. We happen to differ with them as to the appropriateness or otherwise of the descriptive name given to the content of the norm, that of non-discrimination and non-separation, but we have emphasized that that is a question of nomenclature. The important thing is, what is the content which they seek to assign to the norm? And we have looked at their own definitions in their own formal submissions to the Court tendered on those submissions and in the informal explanations given in Court.

We emphasized to the Court why we considered that according to those definitions the norm related to an absolute question of non-differentiation in the allotment of rights and obligations on the basis of membership in a group, race or class; but then, having regard again to certain aspects of the contentions addressed to the Court in the course of argument, it would seem that Applicants possibly have in mind some qualifi-

cations. We were not clear on the qualifications: we did our best to abstract what they could possibly be, and so we suggested to the Court that we would deal with the matter on the dual basis, first of an absolute norm or standard of non-differentiation and, in the alternative, also on the basis of the norm subject to the qualifications. That is the best we can do.

We have to address our evidence to the case which is being made against us and I do not understand my learned friend when he says that it is impermissible for us to address our evidence to what we understand the case to be which is being made against us. Surely, if we have to address our evidence to anything, it is exactly to that case and not to the type of case which we would have liked the Applicants to make or which we suggest is the only one the Applicants could have made, when they make it perfectly clear that they do not make such a case.

If, Mr. President, I suggest with respect, we could find some time to clear up this situation it might possibly help.

The further factor which I do not understand is my learned friends' continuous reference to their difficulties which they have with our scheme and with prior notifications. I can understand questions of that kind being raised when I know that I am dealing with opponents who want to exercise a right of cross-examination. Then I can perfectly understand that, and then we should be pleased to co-operate. Mr. President, even by giving more time as notice as far as we possibly can, subject to the practical difficulties we have in that regard, as to which witnesses we are going to call and on what subjects. We shall be perfectly willing to do that, but I have understood my learned friend to say categorically on several occasions that he does not intend to cross-examine at all. That is why we are, in that respect also, somewhat nonplussed by the attitude taken. However, that, Mr. President, in brief, is why we suggest that the evidence in general will be relevant and, in particular, the evidence of Dr. van den Haag along the lines that I have indicated.

THE PRESIDENT: Mr. Gross, it seems to the Court that there are no difficulties placed in your way and, at the moment, I do not see the embarrassment which you claim to exist. It does not assist very much to say that certain matters are unintelligible or that they are embarrassing, one wants to know in what sense they are unintelligible or embarrassing. The case of the Applicants was based upon a norm which they claim exists, and which they assert does not require or admit of any factual evidence at all beyond that which the Applicants themselves have placed before the Court. The case for the Respondent, on the other hand, is that it cannot be held liable for a breach of the Mandate unless its activities were directed to an alien purpose—a purpose alien to Article 2 of the Mandate—or unless their powers were exercised *mala fide*. The evidence of this witness seems to be directed to both issues; one, to establish in terms of practice in other parts of the world that there is no such customary norm, as is contended for by the Applicants; that it is not supported by general practice; and then it also appears, on the face of it, to be relevant to the question whether such a norm could be consistent with the welfare of the people, and, if it were not, the Respondent would say that that would go to indicate that the exercise of their powers was not *mala fide*. Now, on either of those grounds do you say that the evidence which is being foreshadowed is inadmissible?

Finally, it is not possible, it seems to the Court, that an applicant should

be told in detail what a witness's evidence is going to be. It is not the normal practice. So long as they are given sufficient notice of what the nature of the evidence is, in what way are the Applicants prejudiced?

Would you deal with the question of admissibility first, that is on the two grounds that I put, namely (1) whether you say that under no circumstances, on the Applicants' case or the Respondent's case, evidence of general practice can be given, and (2) that no evidence can be led to establish that the alleged norm, if applied in South West Africa, would be inconsistent with the welfare of the people.

Mr. GROSS: Mr. President, I shall attempt to deal with the question with due awareness of the fact that the arguments have been lengthy and complete and that the Applicants have rested their case subject to their reservations under the Statute and the Rules, and, therefore I shall refrain, to the best of my ability, from re-arguing or even summarizing the arguments which the Applicants have addressed to the Court. With that assurance, I should like to ask the forbearance of the Court if an attempt is made to respond to the honourable President's question in the following terms.

The Applicants' case is, in the Applicants' submission, not accurately or fairly reflected in the Respondent's summary thereof or description thereof, as to which the evidence is proffered by Respondent. The phrase which is used and attributed to the Applicants, and described by Respondent in repeated references in the Oral Proceedings (to which citations will gladly be offered by the Applicants if permitted or requested), does not correspond to the fundamental theory of the Applicants' case.

There are two major branches of the Applicants' case. One relates to standards of interpretation which have been applied by competent international organizations as part of the scheme of the Mandate. This involves the standard of interpretation, of a content described by the Applicants, in relation to the supervisory organ responsible for the supervision of the Mandate, and also involves the relationship between that administrative agency and the Court. This branch of the case, therefore, reflects and is based upon a legal theory which involves the mandate jurisprudence, which involves the clear, explicit and virtually unanimous pronouncements and judgments of the competent international organ which the Applicants submit, for reasons which have been set forth in detail, should be accepted by the Court as authoritative interpretations of the Mandate. It is *apartheid* we are talking about. If this witness or any witness address himself as an expert or otherwise to the questions of discrimination and separation which are implicit in and reflected in the undisputed facts of record in this case, there would be no question of admissibility of such evidence so directed by competent witnesses with respect to that branch of the Applicants' case.

And, secondly, Mr. President, with respect to the norm, the rule of international law for which the Applicants contend in terms of Article 38 of the Statute—that, as the Court will well be aware, has been presented to the Court as an alternative and a cumulative, or supplemental, argument on the basis that the practice of States and the views of the competent international organs are so clear, so explicit, and so unanimous in respect of the policies against discrimination, that such standards have achieved the status of an international rule of law, as a legal conclusion based upon the application of Article 38.

These are the branches of the case. When the evidence is proffered

indiscriminately with respect to the formula, "norm and/or standards as contended for by the Applicants", reflecting and echoing a description thereof in the Oral Proceedings which bears no resemblance to that contended for by the Applicants, either as a standard of interpretation or as a rule of international law, the Applicants have respectfully submitted that such a proffer based upon such a premise or foundation is (with respect, the word used, Mr. President, was "unintelligible" and it may not be "unintelligent") but it is incomprehensible as to what this witness, or any witness, asked to testify with respect to such a formulation, is really addressing himself to.

Now, finally, Mr. President, again with apologies for this lengthy response, as to the question of practice of States—if this or any other witness is competent to testify with respect to the practice of States, citing the official laws and regulations which, in his view, do constitute discrimination or separation by reason of group without regard to individual merit or capacity (which is the contention of the Applicants as to the content and nature of the norm and standards), I should think that it would be perfectly easy for learned counsel for Respondent to explain precisely the standards for which he contends, as standards of interpretation of this Mandate—of Article 2 of the Mandate—to which witnesses are to address themselves. And, with respect to the norm, Mr. President, there is no question in the minds of the Applicants, nor has any question been raised, with respect to the relevance of evidence concerning the practice of States, by witnesses competent with regard to laws, regulations, or official practices which are contended, or analysed as embodying discriminatory practices, in the actual sense found by the competent organs here.

I should like, with the permission of the Court, to question the witness concerning his qualifications, unless indeed there are further questions with regard to the material I have just . . .

The PRESIDENT: That is an entirely different matter altogether. Have you finished the observations?

Mr. GROSS: I have, Mr. President.

The PRESIDENT: Well, I think the Court will hear the evidence. As we indicated yesterday, the Court is quite competent to value evidence and admissibility. At the moment the two contentions are advanced, on the one side, by the Applicants, and, on the other side, by the Respondent, as to the interpretation to be placed upon Article 2 of the Mandate. The Court will probably not be able to determine completely all questions of relevance of evidence until it comes to its final adjudication. I think the evidence should proceed.

Mr. Gross, you indicated that you desire to cross-examine the witness in respect of his qualifications as an expert. He has qualified as an expert upon his testimony and the proper time to do it will be in cross-examination.

Mr. GROSS: Thank you, Mr. President.

The PRESIDENT: Mr. de Villiers.

Mr. DE VILLIERS: Mr. van den Haag, have you ever lived in the Southern States of the United States?

Mr. VAN DEN HAAG: No, sir.

Mr. DE VILLIERS: Where have you lived thus far? In which parts?

Mr. VAN DEN HAAG: I have lived in New York, in the Middle West, in Iowa City when I studied there, for a brief time in Chicago and for a

brief time in Philadelphia and mainly again in New York. I have never been beyond the Middle and the Far West except for two or three days at a time.

Mr. DE VILLIERS: Now you have told the Court that you have made a special study of minority problems and particularly Negro-White relationships. Could you tell the Court, in general, where you stand as a matter of sympathy, as far as the Negro cause, or as one might call it, the Negro question, is concerned; where does your sympathy lie?

Mr. VAN DEN HAAG: Well, I would guess sir, I would say, it lies with both sides. I am interested in an arrangement that would be satisfactory both to Negroes and to Whites and, in this respect, I have maintained for many years, that in the United States and particularly in the South sometimes through the instrumentalities of state laws and at least, practices, have been deprived of rights that they should have, both constitutionally and in regard to generally accepted principles of humanity. I am not—let me add this—fully in agreement with the policies presently pursued to bring about a better arrangement because I think the means will not be very suitable to the ends, but as far as the ends themselves are concerned, namely to bring about a state of equality, of opportunity, between Negroes and Whites, I certainly am in favour of that.

Mr. DE VILLIERS: How did it come about that you specially interested yourself in the Negro question?

Mr. VAN DEN HAAG: Well, it is one of the most prominent social problems now in the United States and I am a sociologist and interested in the social problems that affect the society in which I live. I think it is even a world-wide problem, as these particular proceedings certainly demonstrate.

Mr. DE VILLIERS: Now in your approach to the subject as a sociologist, have you any assumptions or major premises on questions of racial superiority or the like concept?

Mr. VAN DEN HAAG: This concept of racial superiority or inferiority, has always seemed unintelligible to me, for if we were to admit, and I am willing to grant, that the different races both as defined biologically and perhaps as defined socially do probably have different physical and perhaps correlated with that, different psychological qualifications, this last point in parentheses, this last point may I mention, is an open question. There are numerous geneticists who feel that there is probably no correlation between the differential distribution of physical characteristics and the differential distribution of psychological ones. Others feel that there is, and I do not myself feel competent to testify on this point, not being a geneticist. However, whatever they may be, suppose it were to be found that, to illustrate, Negroes on the whole are able on the average, or more frequently, are able to run faster than Whites and Whites, again by way of illustration, are able to jump higher than Negroes, it would not follow that one is superior to the other or the other inferior to the first. It would merely follow that they are different. That there are differences is fairly clear by visual inspection. To attribute qualities of superiority or inferiority means to make a value judgment which, in effect, says that this particular quality, blonde hair, white skin, jumping higher, or running faster, is of great importance and gives superiority or inferiority to the person who lacks it or possesses it. That

is a value judgment which is entirely outside the scope of science and, by the way, a value judgment that I personally reject.

To answer your question more briefly, I reject the idea of racial inferiority or superiority, though I am willing to accept the idea of racial differences.

Mr. DE VILLIERS: Could you indicate whether there is, in that respect, a difference in the approach of the sociologist to questions of group relationships, a difference from that of say a geneticist?

Mr. VAN DEN HAAG: Yes, a geneticist would, of course, be concerned with whether there are inherently different characteristics, whatever they are, and whether these characteristics are genetically inheritable. A sociologist, such as I am, would not be interested really in the existence of these differences, except in a marginal way. He would be interested in their perception and their cultural elaboration, that is, he would wonder whether one group is perceived by another group as different, and how and what the effects of that may be; he would not ask himself so much: is it different? but rather, what are the social causes that lead to the perception as different? and what may be the effects? and if it constitutes a problem, what can or should be done about it?

Mr. DE VILLIERS: So, as a sociologist, for that purpose would it be correct to say that your assumption is a neutral one as far as various genetic theories may be concerned?

Mr. VAN DEN HAAG: I do not think I am competent to decide on them, and I do not think for my purposes it is even necessary to make an assumption.

Mr. DE VILLIERS: Now could you explain, as a sociologist, what you regard as a human group?

Mr. VAN DEN HAAG: Sociologists give a specific meaning to social group—we distinguish it from a mere aggregate of persons. By a social group we mean basically an aggregate that feels as a group, that is bound together by a feeling of group solidarity usually based on the perception of similar characteristics, on a sharing of values, on, possibly, common historical experience; in the past such groups were very largely formed on the basis of religion—the very word "religion" comes from "religare", to bind together—and the group usually supposed itself to be like a family who have originated from a common parent. Today religion has become somewhat less important in this feeling of group solidarity, and through the rise of nationalism, common language, both in the direct and in the metaphorical sense, common historical experience, common enemies, common friends, common values and so on have played a greater role. Let me illustrate: we have, for instance, in the case of the Jews, a case where the group feels largely as a group because of common experience which has occurred in a number of countries, and this feeling of community or group solidarity became strong enough to lead this tribal and religious group to form a new nation. In fact, I would say that nations are groups held together by cultural values that are perceived as common. Now let me add that this mutual identification of group members seems to me, and I think to most sociologists, the foundation for law-abidingness. For the group members, having common customs, tend to accept a common organization and to obey common laws—certainly it is true that laws are fortified by sanctions against violators, but laws work only because few people are tempted to violate them, and the sanctions are required only against a few people, and most

people tend voluntarily to obey the laws precisely because these laws spring from shared and common values and customs within the group in which they prevail.

Mr. DE VILLIERS: So that is a factor of importance for you, as a scientist—to observe the existence of a group, of a sense of solidarity, the factor of law-abidingness and of abiding by customs which have not attained the force of law. Are there any other factors to which you would have regard in order to ascertain this sense of group solidarity?

Mr. VAN DEN HAAG: Well, I should think that it is in a sense somewhat tested by various manifestations other than mere obedience to law; group members, for instance, are usually willing to make unrequited sacrifices in such cases as war and various emergencies; I should think that this would be impossible unless there is a previously established feeling that the members of the group have enough in common so that each member is willing to at least bear the risk of sacrifice, injury and even death, if necessary. I think I was a little vague on the reasons for group formation, and the reason I am a little vague is that no-one has really been able to show exactly what is required—a group becomes a social group if it feels and acts like one, and it feels and acts like one for any of the reasons that I have given. Now there are cases where there is no common language; there are cases where there are rather few common customs, but perhaps a common enemy, or something like that; but in all such cases, what one may say in a most general sense is that the group is held together by a common culture which includes the feelings, perceptions, attitudes, values and disvalues of the group.

Mr. DE VILLIERS: Now, these common groups—may they grow up historically?

Mr. VAN DEN HAAG: Yes.

Mr. DE VILLIERS: The common bonds, I mean—you have said religion could play a part—what about ethnic assimilation?

Mr. VAN DEN HAAG: Well, as I said, there is a perception of similarity in the group members; they often originally regarded themselves as children of the same family most of the time—for instance, religiously speaking, God is referred to as a father, and the group members feel as the children of the same father. Now, as we are well aware, religions were originally tribal in nature, so that the members of one group felt solidarity to some extent also by identification with his fellow members and de-identification with non-members, and this sentiment of identification and de-identification was based on cultural matters, but also I would say on ethnic matters—I use the word "ethnic" to mean both culture and biological origin, or at least as a perception of biological similarities and dissimilarities, including such things as various physical characteristics.

Mr. DE VILLIERS: Perhaps we could get it clear if we ask you what distinction would you draw, if any, between an ethnic group and racial distinctions?

Mr. VAN DEN HAAG: Generally speaking, an ethnic group is a sub group of a race—you will speak of, say, the Jews as an ethnic group being part of the Caucasian race, for instance, but these terms, let me point out, are used in a variety of ways by a variety of people, and I do not think that I want to legislate on what their use should be; but, at least in American usage, "ethnic" refers to a sub-group of a larger grouping which is called "racial", but some anthropologists in America now, since the word

"race" has fallen into disrepute, try to avoid it and use the word "ethnic" as a more general term.

Mr. DE VILLIERS: For you, as a sociologist, that feeling of identity, those common bonds—they are the major factor?

Mr. VAN DEN HAAG: That is the essence of a social group, yes.

Mr. DE VILLIERS: And it could partake of these different forms you have mentioned?

Mr. VAN DEN HAAG: Yes.

Mr. DE VILLIERS: Now, do all people within one geographic area necessarily or always form one group or share the same culture?

Mr. VAN DEN HAAG: Certainly not; for a variety of reasons that is very often not the case, and again let me point out, historically speaking, in many cases the sovereign has felt it desirable—we have, for instance, cases where the sovereign felt that in his dominion only one religion should prevail, wherefore he would then sometimes eliminate, with rather drastic measures, all religions other than the one he would regard as useful to group solidarity, but in many cases now we have larger groups including a number of smaller groups, and in some cases we have more or less compatible groups living together in the same state (area).

Let me point out that a variety of ways of dealing with this has been found. One, very simple, is, for instance, to throw out or kill the group that belongs to a different ethnic or cultural division. I could mention a number of such cases, for instance, the division of India and Pakistan led to the exchange of about eight million population, also, an exchange that certainly was not easy on the Indians in question. In some cases, again India and Pakistan is one case, partition was also involved. If you look at what happened after the Second World War you will find that territories that were ceded, or at least occupied, by Poland and Czechoslovakia had been inhabited by ethnic Germans, and that the Polish and Czechoslovakian Governments immediately insisted on these ethnic Germans leaving what had now become Poland and Czechoslovakia. Incidentally they had no choice, that is, it was not possible, say, for a German farmer in this situation to say, well, I am willing to become a Polish citizen, or something like that. He was *manu militari* compelled to leave the territory because apparently the Polish Government felt that his ethnic Germanness would introduce an element of dis-solidarity into the Polish State, or Czechoslovakian State, and so on.

If you wish me to illustrate this further I will: there are quite a number of such cases.

Mr. DE VILLIERS: Yes, I should like you to mention some more, but I should also like you to give attention to this factor, whether in these instances of which you speak the action, by whatever authority it was, was to be seen merely as having a negative effect of separation, or discrimination, or what have you, or whether it was also perceived of as having positive value.

Mr. VAN DEN HAAG: Well, the best people to ask about that would be the participants, but I think in many cases—let me take the case that I have just mentioned, of the migration of people of German origin from territories now Polish and Czech—I think in the short run this involved considerable suffering and sacrifices. I rather feel myself that in the long run it probably eliminates problems that in the future might have led to considerably more suffering than has now been experienced by these minorities. And again, the partition of India and Pakistan, as

I said, was certainly hard on many of the people involved, but I am not sure that in the long run it may not lead to less suffering than would have occurred had there been no such partition. There was certainly a greater danger of communal clashes, clashes between the various self-identified groups, and perhaps partition was the best way of preserving, in the long run, the peace among them.

Again, you may refer to the case of Israel. The State of Israel was founded, giving finally a homeland to the Jews, which they had long been promised, but of course that also led to about eight hundred thousand Arabs leaving the country, not quite voluntarily, in most cases, and still hanging literally around its borders and no doubt undergoing great suffering.

So the question you are asking me is a little hard to decide in a purely scientific sense: we have suffering and reasonable interests on both sides. I should think that, in the long run, sometimes I would certainly want to recommend partition, sometimes I would want to recommend an attempt at separate existence under the same government, and sometimes I might want to recommend an attempt at integration or assimilation of the minority, and that would depend on the circumstances that would be involved in each case.

Mr. DE VILLIERS: Would it be correct to say that it would involve a balancing of various values?

Mr. VAN DEN HAAG: That is correct, yes.

Mr. DE VILLIERS: In each particular case?

Mr. VAN DEN HAAG: Yes.

Mr. DE VILLIERS: Are you acquainted with a case of what was formerly called "Ruanda Urundi" in Africa?

Mr. VAN DEN HAAG: I have been there, as a matter of fact, but only for about one day, so my acquaintance stems more from the literature. This was formerly a Belgian Colony and the two countries you mentioned were administered as one colonial unit. As the Belgians withdrew the country, upon the desires of the inhabitants, was divided into two, one Ruanda, one Urundi. However, this division, although the two countries are so small as to be scarcely viable, I would say, from an economic viewpoint, this division, nonetheless, was not enough.

In one of the countries, Ruanda, there lived two ethnic and culturally distinct groups, the Bahutu and the Watutsi; the Watutsi are very tall, in fact the tallest group of people in the world, I understand. The Watutsi had for a long time subjugated the Bahutu and as the Bahutu in the newly divided territory, Ruanda, acquired power, partly because they constituted the majority, they used this power to quite literally kill as many of the Watutsi as they could, and compelled the others to flee to neighbouring countries. In fact, I think it was the United Nations that helped in giving refuge to a number of these displaced Watutsi. So here we have a case where I think the separation, though economically quite unviable, in my opinion, nonetheless was indicated for reasons of group conflict but where I think it was not sufficient, and the events that I have described took place. Indeed, in the area in question there is still turmoil and the matter has by no means been settled, because the Watutsi are certainly eager to reconquer the territory from which they have been chased by force.

Mr. DE VILLIERS: Do you have further instances of forced re-location of one ethnic group by another?

Mr. VAN DEN HAAG: Well, I think there are quite a number: let me mention a few. There is certainly one, well known in Russia, where in 1943 the so-called "Volga Germans" were as a group, and against their wishes, transferred to Siberia because the Russian Government, feeling that it was already at war, or going to be at war, with Germany, did not feel that these people, being ethnic Germans, could be trusted to be loyal to the Russian side, and therefore they wished to place them out of harm's way and transferred them to Siberia.

I must say that a similar case occurred in the United States where—I would rather refer here to a book if I may—the Japanese were forcibly relocated from the West Coast where they had been located before, and compelled to enter various relocation centres. It is rather interesting. Many people, including myself, were very doubtful on the constitutional reason for that, but the United States Supreme Court has decided three cases (and I have with me photostats which I will offer for the record), and in these cases it has found that the President had the power to provide for this possible relocation of people who were distinguished from other United States citizens merely because of their Japanese origin.

Let me point out that these people were United States citizens, often of four generations; that the Japanese were certainly not the only group in the United States that was ethnically related to an enemy alien group, so were the Germans, no doubt, and the Italians. But the Germans and the Italians were not forcibly relocated and for that matter were not placed in any camps. Now the reasons for the relocation, some of them, at least; I may quote General De Witt, who was the military commander who undertook, by the authority of the President, this relocation. Being questioned before a Congressional Committee, he said the following:

"The Japanese race is an enemy race, and while many second and third generation Japanese born on United States soil possess United States citizenship, and have become Americanized, the racial strains are undiluted, he is 'still a Japanese and you cannot change him by giving him a piece of paper'."

Perhaps I should quote a comment that Professor Eugene V. Rostow, Professor of Law at Yale University, made on this. He said as follows:

"The original programme of relocation was in no way required or justified by the circumstances of the war, but the Supreme Court in three extraordinary decisions has upheld its main features as constitutional."

And he goes on to say that these Supreme Court decisions have given the authorities, in effect the President, a weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.

Mr. DE VILLIERS: Professor van den Haag, we need not go into the controversial aspects of the decisions themselves, but the Supreme Court decided on the basis of emergency powers justifying this particular decision, did not they?

Mr. VAN DEN HAAG: Well, yes, except that the emergency is always self-declared. Let me put it this way. No showing occurred before the Supreme Court that any of the Japanese relocated had shown disloyalty. What was being said was simply that the authorities were unable to find out whether they might not be disloyal, and they suspected on the basis of their racial or ethnic ancestry that there was this possibility and therefore they relocated. They felt that as far as the Germans were concerned

they could make individual distinctions. But as far as the Japanese were concerned they felt that they had to confine the group as a whole.

As you say, correctly, this decision has been opposed by many people, but it is a decision that is still valid, that is the constitutional interpretation has not been overthrown.

Mr. DE VILLIERS: In other words, the line of demarcation, your point is, was the ethnic line?

Mr. VAN DEN HAAG: No other.

Mr. DE VILLIERS: It was that, and the circumstances there, viz., the circumstances of emergency, were found to justify that line of demarcation in the particular circumstances?

Mr. VAN DEN HAAG: Quite so.

There are other instances, with regard to the United States. I may point out that we have still such lines of demarcation in a number of parallel practices. For instance, if we look at our present immigration laws, it is generally admitted that these are based on purely ethnic, or racial, if you wish, distinctions.

Let me illustrate this point very briefly, and I am referring to immigration laws as they now exist—the last codification of the immigration laws occurred in 1952 and that is the one, the so-called McCarran-Walter Act....

Mr. DE VILLIERS: Will you, please, mention the name of the book for the record purposes?

Mr. VAN DEN HAAG: Certainly. This is Brewton Berry, Professor at the State University of Ohio, and his book is called *Race and Ethnic Relations*. I am quoting from the 3rd Edition (p. 337); it is a commonly used textbook. What he states is that "the quota system, based upon national origins, has remained intact". And we see this. If you will look at the quotas you will find, for instance, that people born in Germany can emigrate to the United States in the number of 25 thousand and some hundreds, in Great Britain 65 thousand and some hundreds, in all of Africa 3,200, in all of Asia 3,290. In other words, the quota for all of Asia and the quota for all of Africa is a few thousand, whereas the quota for Great Britain, Germany, and, generally speaking, the northern European countries, is out of proportion. Let me point out, further, that these quotas are strictly not (as they are sometimes called) by political or juridical origin but really by racial origin. For instance, Orientals suffer a very special type of discrimination *qua* Orientals even though they may be naturalized citizens, for instance of Great Britain, such as some of the Hong Kong Chinese are—they do not come under the quotas of their Western nationalities but are placed under the quota of Orientals, that is, immigration is limited to 3,290 per year. This policy was first codified in 1920 and, as I said, recodified in 1952. I may point out, since I would feel somewhat disturbed if it were to be believed that America is alone in this, that this practice is also followed, in effect, in Australia.

Mr. DE VILLIERS: We have dealt with that, Dr. van den Haag. We need not go into the details. You have read the portion of our Rejoinder, V, pages 196-197, dealing with the cases of Australia and New Zealand, the United Kingdom and Canada. Have you read our exposition?

Mr. VAN DEN HAAG: I certainly have, I must say my recollection is not altogether clear, but I can summarize it very briefly by pointing out that in a number of nations, that for instance in Australia, the total number of Coloured citizens is 1 per cent. or something like that of the total popula-

tion which certainly would not have come about were it not that immigration is racially restricted.

In Great Britain, I may point out (and this is, of course, in recent memory; I must admit I do not recall that I read it in your brief), had a policy of quite free immigration from its various dependencies. This policy has recently been changed as more and more Coloured people, attracted by economic opportunity, no doubt, entered Great Britain. As a result, the last Conservative Government imposed some restrictions which were bitterly opposed by the Labour Party which called them hypocritical, if I recall correctly, but as the Labour Government came to power it, contrary to its promise, did not change these restrictions. So what we have here is that Great Britain, though it has not relocated or confined its Coloured citizens to any particular place in Great Britain, has found it much easier simply to confine them to their locations, or origin, by not permitting them, in great numbers, to enter into Great Britain. The reason given, very largely, was that owing to cultural and ethnic differences, it would be very hard for the population to absorb a great number of these aliens—felt as aliens although politically and juridically they are of course not aliens.

Mr. DE VILLIERS: For the good of the population as a whole?

Mr. VAN DEN HAAG: Undoubtedly, although I am sure that the people in Jamaica may not agree.

Mr. DE VILLIERS: You had, I think, a quotation in regard to Canada which you wanted to add to those we have given to the Court?

Mr. VAN DEN HAAG: Yes, I have. This is from the *Canada Yearbook*, an official publication, which in 1932 (and I am interested in the differences in language) stated: "Canadians usually prefer that settlers should be of a readily assimilable type, already identified by race or language with one of the two great races now inhabiting the country."

The official *Yearbook* for 1963 makes the same point, but in a language which is perhaps a little bit more diplomatic, by saying it has been the policy of the Canadian Government to stimulate the growth of population "by selective immigration. Efforts are made to choose immigrants of prospective adaptability to the Canadian way of life." Now, this is a rather vague phrase but my feeling is that it means quite what was meant in 1932 though it put it a little bit less bluntly.

Mr. DE VILLIERS: Now, I will ask you later on questions of comparisons or the possibility of comparing at all—drawing comparisons between a situation in the United States and, say, in Africa, but, before we come to that, we ought to have clarity on some aspects of the situation in the United States. Do you know of examples, other than by federal action, of official action or legislative action making racial distinctions in the United States?

Mr. VAN DEN HAAG: Let me make two points in my answer. First, in addition to the federal acts that I have mentioned, there has been a considerable degree of voluntary regulation. The whole Republic of Liberia was, after all, founded very largely by American Negroes deciding to leave the country and in Africa found their own separate country in which, in effect, they tried to make it hard for Whites to settle. As a matter of fact, if I am correctly informed, a White person cannot own real estate in Liberia and this at the present time. Now this, of course, was of use only to a rather small group of American Negroes, but throughout the history of minority relations in America you find that among the

Negro population there have been a number of groups that have insisted on separation of the Negroes from Whites. Perhaps, the most important, or at least the most numerous, of such groups was the Universal Association for Negro Improvement formed by Marcus Garvey and which flourished very much in the 1920s when it was said to have two million members—these figures I would not want to vouch for because these are the figures that the Association itself gave and they have certainly not been checked. But it is entirely true that it was a major political force, that it filled at its congress Madison Square Garden, which is quite a big place, and was financially and otherwise quite powerful. Its major aim was the return of Negroes to Africa. It did not achieve its purpose and I think it could not, but it certainly did indicate that there was such a quite voluntary movement afoot. I may say, incidentally, that they also influenced official authorities and on American usage, for instance, the word "Negro" is always spelt with a capital N, and the major reason for that is that this association insisted on that and persuaded the Board of Education of New York to adopt this spelling which then spread all over as a symbolic tribute to the dignity of the Negro race.

Such movements have been many. There are at the present time about 70 such groups. The most important perhaps is one headed by a man named Elijah Muhamet who has founded a group called "The Nation of Islam". The purpose of that group is to persuade, or force, the United States Government to relocate Negroes in the United States by giving them a territory of their own in which they would have a high degree of sovereignty and in which Whites would not be permitted to settle. The programme is not altogether clear to me, and, again, the membership of this association is not altogether certain but it does play a considerable role and such writers as James Baldwin, for instance, certainly, and rightly, taken seriously, have expressed extremely high regard for the movement and its protagonists and have pointed out, I think quite correctly, that the members of the movement are distinguished from many other Negro citizens of the United States by their better deportment, their abstinence from alcoholic beverages, and various drugs, their exemplary family life, and generally what you would speak of as integration of personality.

Now that was one point I wished to make—that is, there are a number of unofficial, voluntary movements.

Mr. DE VILLIERS: Now, before you leave those, is it not sometimes suggested that leaders of a movement like this Moslem movement you have just referred to—are rather eccentric or fanatical?

Mr. VAN DEN HAAG: I rather think they are myself but that I think is usually the case with the founders of either new religions or new political movements of this kind. They are often proposing something that seems utterly impractical but sometimes their very existence and the prophesies they have made has led to its own fulfilment, so I would certainly not vouch . . .

Mr. DE VILLIERS: The question I wanted to ask you was about these other 70 national movements you mentioned. Are they equally extreme or do they show various shades of moderation?

Mr. VAN DEN HAAG: There is an enormous amount of shading; I may add, just to avoid giving a wrong picture, that the major Negro movements in the United States are certainly not the ones that I have mentioned. These are important but, at the present time, I think the National

Association for the Improvement of Coloured People and others that are taking a much more moderate line are probably more influential among Negroes as a whole. They are certainly regarded as more influential by the United States authorities who tend to deal with them to a greater extent than to deal with these groups.

Mr. DE VILLIERS: But still advocating some form or other of voluntary relocation?

Mr. VAN DEN HAAG: Certain groups I mentioned do. The National Association for the Improvement of Coloured People I do not think does.

Mr. DE VILLIERS: Those then, as far as the voluntary movements are concerned.

Now to come back to my question about official action. Do you still find examples of official action within the United States which have the effect of differentiating between groups, particularly this instance of between Negroes and white American citizens?

Mr. VAN DEN HAAG: Well, certainly if you mean by official action by governmental authorities, many governmental authorities below the federal level (state authorities and so on) persist in undertaking such official actions even though most of these actions have become, owing to the Supreme Court's decision in *Brown v. Board of Education* and a number of subsequent decisions, to say the least, of dubious legal standing. But it seems, particularly in the southern states, the local authorities are not willing to throw in the towel and give up the battle, but rather they persist in ever-renewed actions trying to maintain some degree of segregation—sometimes directly, sometimes by closing the facility that the Court has ordered them to desegregate, sometimes by imposing measures not overtly aimed at segregation but having this effect. I think you are quite right in your supposition that the Court's decision, though certainly now legally established, has not led to any remarkable social change in the southern states. I should think that, in fact, the numbers say of Negro school children who go to desegregated schools in the southern states is still extremely small and I do not really foresee that there is any chance that it will greatly increase in the next ten years because there is an enormous local resistance that, now the decision is more than ten years' old, has not been overcome to any large degree; victories have been obtained in the courts, but, as the Negro leaders are the first ones to point out, these court victories have not really led to much practical change. Indeed, there is some reason to say that in many cases, particularly in the north, there is more segregation now than perhaps there was ten years ago. There are numerous economic and other factors that contribute to that. I would not say it is necessarily deliberate, but Negro leaders are the first to point out that desegregation has made very little practical progress. Whether one approves or disapproves of that, this is a fact.

Mr. DE VILLIERS: Now to revert to the action still taken by certain of the state authorities. Would you in all cases say that they are of a repressive or oppressive nature?

Mr. VAN DEN HAAG: Well, this leads into—

Mr. DE VILLIERS: I should not like you to go into detail, I just want to know whether you would classify them all as being for oppressive purposes, whether some are—

Mr. VAN DEN HAAG: No, I would not so classify them. I think one has to make a distinction between segregation and discrimination, although

these two words in the dictionary sense mean about the same, and I would say that I would like to use the word segregation to mean separation, which, of course, need not require or be connected with oppressive measures, but can be so used in the same way a knife may be used to cut a roast or can be used for murder. It is not in the nature of the knife that it must be used for illegitimate purposes, it is not in the nature of segregation, I think; that it has to lead to discrimination if by discrimination we mean, as I propose we ought to, placing someone, or placing a group, at a disadvantage that is not warranted by any relevant element in the situation in which the group is found.

Let me try to explain. When I teach my classes I will give grades according to the performance of the students in the examinations. That is a form of distinction, and you may call it discrimination. The ones that get good grades have certain advantages and the ones that have bad grades get certain disadvantages, but this would be called legitimate because I have, and I hope I always will, applied a relevant criterion. Now if I were to give these grades according not to scholastic performance, but, say, to sex, or religion, or attractiveness, or size, or any other irrelevant criterion, then I think one would call it discrimination.

Now, to return to your question. When the segregation does not involve hardship for either of the segregated groups, or if it does involve a hardship the hardship is due to relevant criteria such as qualifications, say, if one person is hired for a job and the other person is not, if this is due to differential qualifications I do not regard it as illegitimate or unwarranted discrimination. If on the other hand, it is due to irrelevancies and prejudices on the part of the hiring agency, then I would so regard it.

But to return to your question. Segregation may be used for purposes of oppression, deprivation, and placing at a disadvantage, but it need not be so used.

Let me also point out, incidentally, that non-segregation can very well be connected with oppression.

In many universities, for instance, in the past particular groups were not segregated from the rest of the students, but there was a *numerus clausus*, that is, only a certain number of them were admitted whereas others were admitted entirely according to their academic qualifications; there are quite a number of cases where -well, of course, the one that is very clearly in our memory I suppose: that of the Jews in Germany, who were certainly slaughtered (discrimination is not enough); yet there was no segregation of any length preceding this slaughter, which I think indicates, on the one hand, that segregation is not necessary to oppressive measures and that non-segregation does not necessarily make for such group relations as would avoid hardships. (I am still trying to answer your question; I hope you will forgive my lengthiness.) I would regard the instrument of segregation as a neutral one; the effects will depend on the circumstances, and purposes, of the user. It can certainly be used to damage and to oppress the group segregated, but it need not.

Mr. DE VILLIERS: My question is, how is it used, in fact, as you see it, by the southern authorities? Would you say that it all falls into one category or the other?

Mr. VAN DEN HAAG: No, I would not quite go so far, but certainly in the past segregation in the south was used as a disguise and as a device to deprive the segregated group, in effect the Negroes, of advantages that were yielded to the White group.

Now, let me say once more, it does not follow, in my opinion, that this is a necessity; it is a historical event and a historical event must not be confused with a logical or historical necessity. But, certainly I do not think it can be denied that historically, in the past, segregation in the south was used to deprive the segregated group.

Mr. DE VILLIERS: Now I ask you whether that was invariably so, or is still today invariably so?

Mr. VAN DEN HAAG: Now, at the present time? Well, the only way in which I could answer that I would have to pass in review quite a number of things that are now happening and some cases that are still so used, or at least that is the intention--

Mr. DE VILLIERS: I do not want you to go into detail. I just wanted to know whether in some cases it is not so used.

Mr. VAN DEN HAAG: In some cases it is certainly still used so as to discriminate against the segregated minority, but not in all cases. I am familiar with some cases where, in my own opinion, the segregating authority was willing (and, incidentally, this is in the records in a number of judicial proceedings) to spend just as much per pupil and to pay even higher teachers' salaries for Negro children, but wished to maintain segregation. In this case of course, you cannot speak of segregation being used to materially deprive the segregated group—whether there is a psychological deprivation is a matter that I want to discuss later.

Mr. DE VILLIERS: We shall come to that later. Now could you first indicate to us whether you can pass some general comment on possibilities of comparing the American Negroes with the indigenous inhabitants of Africa?

Mr. VAN DEN HAAG: Well, of course the American Negroes originally came from Africa, but I think there are very major differences. One is a purely biological one, and I merely here report what is generally accepted without making a judgment of my own. It is generally said that African Negroes, on the whole, are purer Negroes whereas it is generally accepted that there is about a 30 per cent. admixture of non-Negro genes, or blood, in the American Negro. Now I cannot vouch for these figures, they are the ones that physical anthropologists seem to agree on. That is a genetic difference.

But I think the difference on which I am more competent to speak, and which I think is also more important, is this: that American Negroes have not retained, and could not retain, a culture of their own. They were transported to the United States in such a way as to break their tribal bonds so that, say, on a slave ship there would be Negroes from a variety of tribes that spoke different languages and could not speak with each other, nor did they share common customs and so on, they shared, at most, the fact of all being coloured; and, of course, once they came to the United States and were sold again they were further dispersed. In some cases even the members of the families were separated from each other. The result of that was that they lost whatever Native culture and tribal unity they had, and acquired, to the extent to which the conditions made that possible, American culture. That is then, to put it very succinctly, the American Negro does have American culture, an American Negro sub-culture if you wish—a sub-culture just as that of say long-shoremen may be called a sub-culture owing to specific circumstances of their life—but it is part of American culture and certainly not of African culture. They do not speak African languages, they have no direct mem-

ory or tradition of any tribal life, they would not know, if they were asked, to what tribe they belonged or from what part of Africa their ancestors came. In short, they are coloured Americans, but Americans still.

Let me mention Liberia. Let me point out for instance the American Negroes that did arrive in Liberia imported the English language and American usages there and, in effect, formed an upperclass Americanized elite in Liberia that has a relationship reputed to be one of oppression to the native-born Negroes there. I am not maintaining that this reputation is correct, I have not been in Liberia, but certainly one thing I can easily maintain is that the group of Negroes that came from America and formed the ancestry of the now ruling class in Liberia has an American culture as distinguished from the Native tribes; and American Negroes in America certainly do.

Now, you asked me to compare this with African Negroes. From your own documents, and from a little experience I have myself of Africa I have visited it once—I would say that in many cases African Negroes still possess a tribal feeling of belonging and they still possess a tribal culture, tribal customs, ideals, attitudes, and so on, of their own. So that in Africa there is still a problem of what will happen to the Native culture; in America there is no Native Negro culture to be dealt with in one way or another, the American Negroes are coloured Americans who because of their colour have suffered a peculiar fate but who have no culture of their own, whereas the African Negroes certainly do—some of them more, some of them less.

I visited the Congo some time ago and I met a number of Congolese politicians and so on that were described to me as detribalized, that is, as no longer being very much connected with their tribes, but in my observation, however brief, I found this not to be the case. For instance, I enquired at one of the Ministries what led, in effect, the various civil servants and so on, to occupy positions in that Ministry and I was told that they are a part of the tribe to which the Minister belonged and that was their main qualification. In short, the tribal feeling is still very strong as certainly has also been shown say, in Katanga, in other parts of Africa where the major clashes were between tribes such as the Lunda, Bafuba and what not.

I want to make it clear that this is not based on personal observation of every part of Africa, but upon the study of literature—I should think that tribal cultures are still very strong there and that would be the major differentiating point.

MR. DE VILLIERS: Would you consider that there are positive values worth maintaining in those tribal or ethnic cultures of Africa?

MR. VAN DEN HAAG: I would maintain that that is so, in principle, wherever there is a Native culture that has any sort of strength I would think that I would make every effort I could to maintain it, for I think that the change of culture, particularly the acceptance of an alien culture, is usually connected with so much psychological suffering, leading to social and individual phenomena of a pathological sort, that if it was necessary to bring about such a change, I certainly would want to do it in the slowest and most supervised way. May I add that the only major country which has gone about such a change in a reasonably successful way, has been Japan, but under very specific circumstances which cannot and have not been reproduced anywhere else.

MR. DE VILLIERS: Now you are talking about . . .

MR. VAN DEN HAAG: Change in culture—was that not what you . . .

MR. DE VILLIERS: Yes, in the case of an Asian people. I was talking more particularly about Africa. Now, could you indicate briefly what you would regard as pros and cons involved in a destruction of such indigenous culture, of tribal or ethnic culture?

MR. VAN DEN HAAG: Forgive me for saying so: it is a question too general to answer in any way other than a lecture which I think you do not want to hear. There are cases when the change occurs suddenly and without regulation by superior authority. Such a change can lead, both to the physical extermination of the group on which the change is imposed or which accepts a change without retarding factors and suddenly; or to its—I would say—psychological destruction, leading to such phenomena as Emile Durkheim described as *anomie*, that is, a feeling of rulelessness, a feeling, that is, of purposelessness. The English anthropologist, W. H. R. Rivers described it in Melanesia—I am going out of Africa but I will return in a moment—where he says, the rapid change in culture, actually led to the extermination of the Melanesians, not by violence, but in effect because these people, who had been head-hunters, and for whom head-hunting was the major occupation, suddenly felt that life no longer had a central purpose.

Now you find this parallel with American Indians. Of course, many material measures were taken about American Indians that quite materially exterminated them. The Government, however, ultimately tried to protect them by locating them in certain Indian Reservations where it hoped that the Native culture of the Indians would, in a self-sufficient way, maintain them both materially and psychologically. It was too late as you know, and as a matter of fact, most of the Indian population has been eliminated. The question was—would you be good enough to refresh my memory?

MR. DE VILLIERS: Yes, now I think you have answered it—to indicate some of the positive and negative aspects which may be involved in the destruction of a Native culture, depending on the circumstances in which it occurs.

MR. VAN DEN HAAG: I do want, if I may, to add one point. I do not want to appear to say that it is entirely impossible for one culture to accept possibly beneficial things from another culture under certain circumstances. If it is done in a reasonably slow way it can be, indeed, extremely useful. Indeed, one may say that in the history of the world, few cultures have been totally isolated, each culture has learned sometimes from other cultures, but there is an enormous difference between a technologically superior culture overwhelming one that is technologically not so accomplished, and between that last culture slowly accepting some of the benefits of the culture that is technologically more accomplished.

MR. DE VILLIERS: Now, to revert to the position in the United States for the purpose I indicated before; you have dealt with voluntary and involuntary cases of separation, of re-location and of migration. You have indicated that those have taken place until quite recently but now, is not the judgment in the *Brown* case, to which you referred, an indication that such events will not be repeated in the future?

MR. VAN DEN HAAG: May I ask you to repeat your question? I did not quite follow you.

MR. DE VILLIERS: Yes, I mean you have spoken of certain events

indicating re-location on a racial or an ethnic basis, on a differential basis in the United States, voluntary and involuntary separation and so forth, official action in that direction; I ask you whether the United States is not now facing a new era in that regard as a result of the decision of the Supreme Court in *Brown v. Board of Education*.

Mr. VAN DEN HAAG: Well, that decision certainly would deprive of legal sanction any act of re-location that has the purpose of separating the races. It would not, I think, prevent such activities, as I mentioned before, that the "Nation of Islam" would want to bring about such a separation on a voluntary basis or possibly impose it; what the *Brown* decision does is certainly to say that state authorities, in particular schoolboards, but the matter has been enlarged in other decisions, cannot separate pupils in public facilities on the basis of race or colour.

Mr. DE VILLIERS: Now, as I understand the *Brown* decision, it overthrew the previous case of *Plessy v. Ferguson*; the Court seemed to rely, amongst others, on the difference in the state of psychological knowledge at the time of the *Brown* decision as compared with that at the time of *Plessy v. Ferguson*.

Mr. VAN DEN HAAG: Yes, the *Brown* decision, and I think I quote it correctly, says that whatever the state of knowledge was at the time of *Plessy v. Ferguson*, which decision maintains that separate but equal facilities would satisfy the fourteenth amendment of the Constitution that guarantees the equal protection of the laws, whatever, the Court says, was the state of knowledge at that time, "modern authority" has demonstrated that segregation is "inherently unequal" so what the Court said was in fact, that social scientists who were prominent in the lower courts in these cases, have demonstrated that even when facilities are altogether equal, the mere fact of segregation inflicts an injury on at least one of the segregated groups, and is therefore inherently unequal. That has been the court's decision.

(Public hearing of 23 June 1965)

The PRESIDENT: The hearing is resumed. I call upon Mr. de Villiers to continue with his witness.

Mr. DE VILLIERS: Dr. van den Haag, at the conclusion yesterday we were referring to the decision of the United States Supreme Court in *Brown v. Board of Education* and you pointed out that that rested on a scientific proposition derived from evidence given by social scientists in the lower court. As you put it here, the proposition was that even when facilities are altogether equal the mere fact of segregation inflicts an injury on at least one of the segregated groups and it is therefore inherently unequal.

Mr. VAN DEN HAAG: Yes, Sir.

Mr. DE VILLIERS: Did that proposition of the infliction of injury, relate in the particular case to the situation of Negro school-children attending segregated schools?

Mr. VAN DEN HAAG: Yes, Sir.

Mr. DE VILLIERS: Now, I should not like to go too deeply into controversial aspects of the situation in the United States for the purposes of this case but I think it would be useful if you could indicate to the Court whether that proposition, as we have now analysed it, is generally accepted

and acceptable in your branches of social sciences even in its application in the United States.

Mr. VAN DEN HAAG: No, Sir, I do not think it is generally accepted but I would like to make a distinction. Professor Edmund Cahn of the Law School of New York University and I were the first two persons to criticize the scientific evidence presented to the Supreme Court in a brief *amicus curiae* which was signed by a number of social scientists; it was prepared by Professor Kenneth Clark of the City College of New York, and Professors Isidor Chine and Stuart Cook, both of them colleagues of mine at New York University. Professor Cahn, also of New York University, and I were the first ones to criticize this. Professor Kenneth Clark, who was the main author of this appendix to the Brief of Appellants in the Supreme Court, responded to our criticism in an article which he published originally in the *Villanova Law Review* and reprinted in his book, which I have here, *Prejudice and Your Child*, in the Second Edition (which I see from your own material you did not use). In this appendix to his book he, by name, tries to counter my own criticism. In turn, I rejoined in another article in the *Villanova Law Review* which I have with me.

Since that time, 1957-1960, quite a number of social scientists have indicated that they agree with my criticism of the factual presentation. However, they do not like my conclusions and, therefore, I recall that when I printed them first I got quite a number of letters from friends and colleagues expressing agreement with what I said which, for reasons that you will see, I think is fairly uncontroversial but feeling that I should not have published it at the time because they felt that, for other reasons, the general United States policy of integration should not be criticized.

Mr. DE VILLIERS: Could we start at the beginning? You referred to Professor Clark. Did his testimony play an important part in regard to the *Brown* decision as far as you could ascertain?

Mr. VAN DEN HAAG: Well, yes . . .

The PRESIDENT: Mr. de Villiers, in what way do you indicate to the Court that it is relevant what this professor thought, or what part he played in the court's proceedings.

Mr. DE VILLIERS: Perhaps I should not frame it that way, Mr. President. I wanted Professor Clark's testimony as a proposition which he put before the court to be identified with a view to clearing up what the witness has just said to the Court in regard to criticism offered of that proposition. That is all that I am really . . .

The PRESIDENT: Will you then please confine your question.

Mr. DE VILLIERS: Was Professor Clark a professional expert witness in the *Brown* case?

Mr. VAN DEN HAAG: In this sense: (1) the *Brown* case was consolidated with a number of other cases, one of them the *Brown* case itself, and in all these cases in the lower courts Professor Clark testified—and I will describe if you wish his testimony—and this testimony was, of course, part of the record and that record was cited by the Supreme Court in its *Brown* decision. It relied, in short, on the records made in the lower courts of which Professor Clark's testimony was a prominent part. Furthermore (2) in footnote 11 of the Supreme Court Decision, Professor Clark and all the other authorities that he himself has quoted in his brief *amicus curiae*, are quoted to support the court's contention that its decision rests on "modern authority". In other words, Professor Clark is

undoubtedly the "modern authority" on which the court rested its decision.

Mr. DE VILLIERS: Did you check on those various authorities to see what they amounted to?

Mr. VAN DEN HAAG: Yes, I did. Let me point out also, if I may—I just want to make it clear to the Court that we are dealing with the factual basis of the *Brown* decision—here is a brief comment from Professor Philip Kurland, Professor of Law at the University of Chicago. In brief he says: "Dr. Clark's study was utilized by the Supreme Court to provide a factual base on which to rest its conclusion." So there was no doubt that it was Professor Clark's evidence in question. Now, if you want me to indicate what that evidence was, I will.

Mr. DE VILLIERS: Yes, the evidence of Professor Clark?

Mr. VAN DEN HAAG: Yes.

Mr. DE VILLIERS: Yes, please, just briefly what the effect of his evidence was.

Mr. VAN DEN HAAG: Professor Clark made two series of observations or experiments. For the purposes of the lower courts he tested in the jurisdiction of the court 16 Negro children in a segregated school in Clarendon County, South Carolina, and he asked these children to distinguish between dolls that he presented to them, some coloured brown—dark brown, nearly black—and some coloured white, and, having ascertained that these children were able to distinguish colours and were able to identify the dolls as representing either Negroes or Whites, he asked the children questions such as these: Which is the nicer doll? Which doll would you like to play with? and, finally, Which doll is like you? Now, he found that a majority of these Negro children (9 and later in his testimony 10 out of 16) did decide that the white doll was the nicer doll, the doll they would prefer to play with, and, finally that they themselves, although Negro children, were "like" the white doll. From this, Professor Clark concluded that segregation causes considerable harm because it causes these children to be "confused in their identities"—these are his very words—and that these results that he found with these 16 children are consistent with previous results which he obtained with over 300 children, and to which I shall turn in a moment.

He goes on to say that this proof that segregation inflicts injuries upon the Negro had to come from a social psychologist, as he himself was.

Now, the interesting thing is that he undertook prior experiments which were in fact undertaken about ten years before the court cases occurred and which were published in a book called *Readings in Social Psychology* and edited by Professors Newcombe and Hartley in two editions, the last one in 1952 (pp. 551-560). I have the photostated chapter with me. Now, in this experiment, Professor Clark tested 134 Negro children in segregated southern schools and compared the results with tests given to 119 Negro children of the same age group which were in unsegregated schools in the north (precisely in Springfield, Mass.). Now, he found that, everything else being equal, "the Southern children in segregated schools are less pronounced in their preference for the white doll compared to the Northern [unsegregated] children". Professor Clark's table 4 which, again, I have here, indicates as much (p. 559).

Now I will be very brief. What this means is that when Professor Clark presented evidence on the segregated Negro children in Clarendon

County he attributed the results, namely that the Negro children identified with the white rather than with the black doll, to segregation. As a matter of fact, in prior experiments which he forgot to mention to the courts, he had found that when Negro children are not segregated their identity is more confused, that is, they prefer the white doll more often and identify—that is, answer the question "Which doll is like you?"—more often by pointing to the white doll.

So if we were to accept the general framework of Professor Clark's experiment we would have to conclude not what he concluded, namely that segregation is harmful to Negro children because it confuses them in their identity, but we would have to conclude quite on the contrary, that when they are not segregated the Negro children tend to be more confused than when they are segregated. Of course one would think that this is really common sense, because when they are together with white children the possibility of confusion and the wish perhaps to be white will become more prominent in their minds than when they are isolated and segregated. However, this conclusion does not seem to have been drawn by Professor Clark.

I called attention in the article I mentioned (*Villanova Law Review*, Autumn 1960) to this curiosity, namely that Professor Clark attributed to segregation a confusion and possible injury that occurs, according to his own evidence, more frequently when there is no segregation. After I had published my results on this and my analysis—which again I will offer for the record—Professor Clark answered (and I am quoting his passage in its entirety):

"On the surface, these findings [which I have just discussed] might suggest that northern Negro children suffer more personality damage [they are not segregated] from racial prejudice and discrimination than southern Negro children. However, this interpretation would seem to be not only superficial but incorrect. The apparent emotional stability of the southern Negro child may be indicative only of the fact that through rigid racial segregation and isolation he has accepted as normal the fact of his inferior social status. Such an acceptance is not symptomatic of a healthy personality. The emotional turmoil revealed by some of the northern children may be interpreted as an attempt on their part to assert some positive aspects of their selves." (*Prejudice and Your Child*, 2nd enlarged edition (Boston, Beacon Press), pp. 44 ff.)

I would like to submit to the Court here that in the first place Professor Clark starts by speaking, in the quotation I just gave you, of personality damage and ends by speaking of emotional turmoil. These two terms are not the same. A person with a perfectly uninjured personality may have emotional turmoil. That is not symptomatic of an injury to personality, it is symptomatic of a temporary state. But more important, let me point to a very simple thing. What Professor Clark here asserts is, if the outcome of the experiment is that under segregation children prefer, in the majority, the white doll and identify with it, that shows injury. And then Professor Clark goes on to assert that if they again prefer the white doll under no segregation, that also shows injury, or turmoil.

Now I think it is a general rule of scientific procedure that an experiment which, regardless of its outcome, supports the same hypothesis, is not relevant at all and is obviously constructed in such a way as to be

useless in deciding the issue. But Professor Clark has interpreted his own experiment to show that under segregation the preference for a white doll shows injury brought about by segregation, and under no segregation the preference for the white doll also shows injury brought about through no segregation at all.

It follows then that Professor Clark's experiment contributes nothing to the issue, and his conclusions, as submitted to the Supreme Court, stand independently of the evidence on which they are purported to have rested. I know of no other scientific evidence cited by the Supreme Court or existent anywhere that segregation *per se* causes injury. I certainly would not wish to deny that, depending on the historical circumstances, it may cause humiliation, it may be unpleasant, it may be undesired, just as in other cases it may not be so, but I must assert that there is no scientific evidence whatsoever that segregation in the cases contemplated by the Supreme Court, and in any other cases that I am aware of, *per se* causes injury. Please allow me to emphasize *per se* because in the cases decided, in *Brown*, it was stipulated by the two parties that all facilities would be equal and the only question before the court was whether the mere act of segregation in itself was injurious, and this is what Professor Clark tried, and in my opinion did not succeed, to prove.

Mr. DE VILLIERS: Did Professor Clark rely only on these doll tests?

Mr. VAN DEN HAAG: In his own testimony yes. In the brief that formed an appendix to the appellant's brief in the Supreme Court he quoted about at least a dozen books which come to the same conclusion, but none of these books have any scientific evidence for this conclusion. This is, shall we say, a speculative conclusion, and the authors of the books themselves would not indicate that it is anything more.

Let me point out that one reason why it is very hard really to have any evidence directly on segregation is this: in the first place it is extremely hard to test whether a child has suffered an injury to his personality. I am, as I mentioned before, a psycho analyst and as such I do not know of any test, in the sense in which this word is used in science. Secondly, if you were to find such an injury, I do not think it would be at all possible to be able to say that this injury is due to segregation or any other such large factor. There are quite a number of things that may injure the personality of a child. It may be the behaviour of his mother, it may possibly be a general prejudice existing in the community, it may be all kinds of individual factors, and I would think that such an injury has not been proved; and if I were to try to think of a way of proving or disproving it I must admit that I could possibly try to indicate whether there was some sort of injury, but I would not be able to say directly it is due to segregation or to non-segregation. My own feeling is, to make it very short, that as long as prejudice exists in the community, segregation is probably more favourable to the group against which the prejudice is directed than is congregation, for the very simple reason that as long as prejudice exists a segregated school is likely to isolate them from that prejudice, whereas a congregated school, when the majority or major group of their co-students have a strong prejudice against them, is, of course, if not necessarily harmful, certainly very unpleasant.

Here let me mention that after the Supreme Court decision two students finally entered the State University of Alabama and one of them, after two years, withdrew--his name is James Hood, the case acquired a

certain fame at the time--voluntarily, feeling and declaring publicly (I think that it appeared in the *New York Times*) that he felt that he had a foot "in both races"; that is, he felt in some way that his attending a largely White university in a fairly hostile atmosphere, and at the same time trying to remain a member of the Negro community, put him into a so conflict-ridden situation that he withdrew voluntarily after two years, although his admission had been a lengthy, difficult process, with a lot of law suits and so on.

Mr. DE VILLIERS: I just want, before we leave this subject, to come back to this question of testing. Did Professor Clark publish material about other tests, such as colouring dolls?

Mr. VAN DEN HAAG: Yes. There is one doll test, which I have just indicated, where dolls were shown. There is another test in which Professor Clark gave a piece of paper to the children, to Negro children in segregated southern schools and also again in non-segregated northern schools, and asked them to colour a variety of things, I think an orange and other things that were on this paper, and the children did so correctly. Then he finally asked them to colour a human figure, suggesting to them that they should colour it with their own colour. Now he found that in the segregated southern schools 80 per cent. of the Negro children coloured the human figure on the piece of paper that they had been given brown, that is with their own colour, but only 36 per cent. of the Negro children in the de-segregated northern schools did so. The remainder of these children either coloured the figures with what Professor Clark called an irrelevant colour, such as green, or something like that, or tried to colour these dolls white, by using a white crayon.

Again, he concluded, of course, that the failure of these children to colour the drawings with the colour that would be correct, according to what they had been asked to do, indicated a personality injury.

Mr. DE VILLIERS: Now, as you have said, those results, taking them at their face value, would appear to support the opposite contention to that of Professor Clark. Could you tell the Court what you think of the intrinsic merit of those tests?

Mr. VAN DEN HAAG: To be frank, very little. The reason for which I would think very little of these tests is very simply this, that I think children's choice of colour may be determined by things that have absolutely nothing to do with segregation or desegregation. Children, in my experience, usually prefer light colours to dark, and in our culture, American culture, and in most countries of the world, though not by any means in all, white stands for such things as purity, innocence, gaiety, and so on, and black stands for such things as evil, terror, night, and so on, so I would think it is fairly natural that children, on the whole, usually will have a preference for white and that I think is a more reasonable explanation of their behaviour than that given by Professor Clark. However, I wish to point out that Professor Clark does not accept the view I have just expressed; that he does feel, and has reiterated that he does feel, that the colour choice was due to segregation or non-segregation and, let me add, that the Supreme Court has accepted Professor Clark's contention rather than my own.

Mr. DE VILLIERS: Have other objections been raised to what one might call the Clark experiment?

Mr. VAN DEN HAAG: Of course, there are numerous things in them which I think from a scientific viewpoint are incorrect. The normal

thing would have been to do far more extensive so-called "control tests"; one could have done control tests with other minorities for instance. One could have done even general control tests; it might be that people in general are confused about their identity and that one need not be a Negro child to have such confusion, in fact a number of social psychologists feel that our times are characterized by such general confusions.

There are all kinds of possible explanations for Professor Clark's results. The one that he selected, the two rather that he selected because he did select two inconsistent ones, are selected quite arbitrarily, I think, to serve a particular purpose. I find no other explanation for this.

MR. DE VILLIERS: Now have these criticisms and attacks on the reliability of the proposition advanced by Professor Clark, found their echo in any later proceedings in the United States on segregation matters?

MR. VAN DEN HAAG: Yes. I wrote my own rejoinder to Professor Clark and my original criticism years ago; about three years ago my articles and so on were discovered by a number of lawyers and were used in lower federal court proceedings, at some of which I also testified myself. In two of three cases in which I testified the case was won in the sense that the *Brown* decision was regarded as inapplicable because of a factual vice. However, the Court of Appeals maintained that the *Brown* decision was not necessarily based on the fact but was based on legal considerations and therefore should stand. The matter has been appealed to the Supreme Court which has declined, I think in two cases, to hear it again and in one case the matter is still pending.

MR. DE VILLIERS: Do you know whether the Supreme Court itself has indicated in subsequent decisions whether it considered its decision in the *Brown* case as resting on the factual proposition, or purely on a view of the law?

MR. VAN DEN HAAG: No, the decision of the Court not to hear a further appeal was, as you probably know, without opinion so I do not know what considerations were in the Court's mind and one case is still pending; perhaps we will get an opinion in this case.

MR. DE VILLIERS: Do you know of any scientific defence of Professor Clark after this matter had been raised in public?

MR. VAN DEN HAAG: The only defence that I know of is the one I read and that seems to me a defence possibly of his conclusion, but not of his experiment.

MR. DE VILLIERS: Now you have indicated to us already that, quite apart from the authority of the *Brown* case, you do not consider that segregation, or differentiation, must necessarily lead to discrimination in the unfavourable sense.

MR. VAN DEN HAAG: Yes, as I tried to indicate yesterday, I think, depending on the intention of the user of these devices and on the wishes of those concerned and on the circumstances, segregation must be regarded like a knife, or any other instrument, as neutral; it can be used for surgery, it can be used for murder; it can be used for beneficial purposes, it can be used for malevolent ones.

MR. DE VILLIERS: And you do not believe in the proposition of inevitable psychological damage following on separation, or segregation, or differentiation?

MR. VAN DEN HAAG: I certainly believe that this conclusion has in no way been proved and, on the face of it, I would say in many cases, though by no means all, desegregation is probably far more harmful.

MR. DE VILLIERS: Now we have dealt with the situation with regard to those propositions in the United States of America. You have read our expositions, in our Counter-Memorial, have you not, on the existence of different population groups in South West Africa and on the differences existing between the groups, amongst others, in regard to their culture?

MR. VAN DEN HAAG: Yes, sir.

MR. DE VILLIERS: Do you find anything inherently improbable in those descriptions?

MR. VAN DEN HAAG: I have no personal knowledge that would permit me to either confirm or disconfirm them, but what these descriptions, if my recollection does not deceive me, say is simply that there are a number of specific cultures—

THE PRESIDENT: I recognize the Agent for the Applicants.

MR. GROSS: Mr. President, I should respectfully like to have clarification of the intent and purport of the question just asked by counsel; the specific references to the Counter-Memorial upon which the question is based; identification of the groups, and the differences to which the witness is now being asked to testify—all subject, Mr. President, to the general reservation regarding relevance.

THE PRESIDENT: I understand. Mr. de Villiers, perhaps you might put your question more specifically.

MR. DE VILLIERS: Mr. President, may I indicate my purpose is not to ask the witness to give confirmatory evidence of what we said. The witness does not pose as an expert on the situation in South West Africa and I shall not try to use his testimony in that respect. I am merely asking him whether, as a psychologist and a sociologist, he finds anything inherently improbable in our description. I am not taking it any further than that. Following on this I want to ask him what, under the circumstances as we described them and under circumstances of an educational system as described, he would think the probabilities are in regard to inevitable injury in a situation as in South West Africa. That is the purpose of the question.

THE PRESIDENT: Perhaps you had better ask the question and then Mr. Gross you can object to the question, it is not much good objecting at large.

MR. DE VILLIERS: Mr. van den Haag, particularly in our Book III (III) of the Counter-Memorial, we gave detailed descriptions of the various population groups existing in South West Africa and I asked you whether you had read that.

MR. VAN DEN HAAG: Yes, sir.

MR. DE VILLIERS: And whether you had read the descriptions we gave there of differences existing in their levels of development, their modes of life, their habits, their cultures.

MR. VAN DEN HAAG: Yes, sir, I have read these.

MR. DE VILLIERS: I merely asked you to indicate whether, in the light of your general knowledge of human relationships over the world, you find anything inherently improbable in those descriptions.

THE PRESIDENT: I recognize the Agent for the Applicants.

MR. GROSS: Mr. President, I renew the objection previously made on the grounds stated, and, more specifically, in the light of the question just asked. I object on the grounds of lack of specificity, since the question cannot be answered in the form addressed without reference to the group or groups attempted to be judged or commented upon by the witness as

an expert or otherwise, and to the respects in which each such group is to be subject to scrutiny by this witness on the basis of expert or other criteria. Specifically, therefore, the objection would raise the question whether this expert, or any other, could testify with regard to such a general question as "inherent probability", or inherent anything else, without at least a foundation laid for the exact subject of enquiry.

There will be a secondary objection with respect to the formulation of a question addressed to this witness with respect to whether a certain issue, or question, or criterion, or argument, is "inherently improbable". Those words, it is respectfully submitted, do not convey any intelligible significance from an expert or other point of view.

MR. DE VILLIERS: Mr. President, may I point out--

THE PRESIDENT: I do not think it may be argued, Mr. de Villiers, at the present moment.

On the question of identification, the identification is by reference to Book III of the Counter-Memorial which the witness might be asked if he has read completely in respect of at least certain pages and certain subject-matter. That identifies the information and then the question is whether the witness, as an expert, is entitled to express his views upon it. In general, he is entitled to express his views. The weight of his views must be a matter for the Court to determine at some subsequent period. But I think first the question may be put to the witness and then, if there is any objection to the form of it that may be taken.

MR. DE VILLIERS: Then I put that question to you, Dr. van den Haag, whether you find anything inherently improbable in the description as contained in Book III of the Counter-Memorial?

MR. VAN DEN HAAG: I am aware, as any sociologist is, that there are in this world different human groups at different levels of development, if we take development not to be a matter of developing by regular stages which is a theory I do not hold—but it is certainly true that some peoples have primitive, and others more complex, cultures, that some are pre-literate and others are literate, that some are more highly developed and others less highly developed in particular respects (for instance, Western civilization has a high technological development, the Indian civilization has a very complex philosophical development but not so complex a technological one, and so on), so there are major differences along those lines and though I cannot vouch for the correctness of the description of these differences in South Africa I should think that, in general, one would expect that different tribes, different people, different groups, are developing in different ways.

MR. DE VILLIERS: Have you also read, in Book VII (III) of our Counter Memorial, the description given of the aims of, what one might call, the Bantu education policy?

MR. VAN DEN HAAG: Yes, sir.

MR. DE VILLIERS: The aims more particularly of resting that education on the basis of a sound respect for one's own culture and developing from there towards drawing new things into that culture?

MR. VAN DEN HAAG: Not only have I done this but, if you will permit me, I wish to point out that Professor Kenneth Clark, with whom, as I have just mentioned to the Court, I seldom agree, has recently proposed that in the New York schools, in effect, there be introduced a form of resegregation because he has become aware of the fact that for various reasons the Negro pupils are unable to perform on the same level, in the

majority, as the White pupils. Now he ascribes that to cultural deprivation, but he—and, in my opinion, quite correctly—finds that they should be separately schooled, at least for the time being, so as to be able to catch up, and only then be put in schools together with their White co-students, because otherwise the teaching will go, as he puts it, "over their head", and they will lose motivation and so on. So that, even in the United States, where certainly the developments are less dissimilar than they are between Whites and Negroes in South West Africa, segregation is now being recommended in effect on purely educational and didactic grounds.

THE PRESIDENT: I recognize the Agent for the Applicants.

MR. GROSS: I move respectfully that the testimony just given be deleted or ignored, without a specification and citation by the witness concerning Professor Clark's work to which the witness has referred and purported to characterize.

THE PRESIDENT: You wish the citation to be made to the work?

MR. GROSS: Yes, Mr. President, or else the testimony and the characterizations just given be stricken or ignored.

THE PRESIDENT: Perhaps the witness will identify where the statement can be found?

MR. VAN DEN HAAG: I am unable to do so at the moment—I did not bring this with me—these are the conclusions of an interview in the *New York Times*; I will be able to mail the appropriate article to Mr. de Villiers if necessary. Let me point out that this is uncontested, at least in New York; I had not foreseen that I would refer to it, and so I did not bring the documentation with me.

THE PRESIDENT: Mr. de Villiers, the information should, at some time, be placed upon the record.

MR. DE VILLIERS: Certainly, Mr. President.

THE PRESIDENT: The evidence will remain on the record; the Court is quite able to evaluate evidence, and if there is no value in the evidence, then there will be no value given to this part of the evidence. If, on the other hand, the Applicants feel that they will need it for the purpose of cross-examining the witness, then the witness will be brought back to enable the Applicants to cross-examine.

MR. GROSS: Then, Mr. President, the Applicants respectfully reserve the right to cross-examine, and would appreciate the opportunity to examine the documents or any other references to which the witness has referred.

THE PRESIDENT: Mr. Gross, I noted yesterday—it might be said now, because it is rather important—that in the course of your objections you said that you had not been given sufficient notice of the purpose and of the type of evidence which was going to be given, and secondly that you could not adequately prepare cross-examination. Without commenting upon whether you could, in the circumstances of this morning, having read the transcript overnight, cross-examine, the Court will not have it appear, because we do not think it to be the fact, that the Applicants are placed in any position of prejudice, and it is proposed, when the witnesses conclude this evidence, that you should be asked whether you propose to cross-examine at all, and if you do propose to cross-examine, whether you propose to cross-examine this morning, and if not, why are you not in the position to proceed with any cross-examination? If you are prejudiced in respect of any particular matter, or claim to be pre-

judiced, then the Court will certainly protect the rights of the Applicants.

Mr. GROSS: Thank you, Mr. President.

Mr. DE VILLIERS: Thank you, Mr. President. Now, Dr. van den Haag, I should like you, as an expert, to assume the correctness of the description you have read about the aims and the nature of the Bantu education policy in the respects I have indicated to you. There will be other evidence about it—there is evidence on the record—I am not asking you to give evidence about the factual correctness of the assumption; but assuming the correctness of that proposition about the aims and the nature of the Bantu education system, would you, in the context of such an educational system, expect that the mere fact of separation of children into different schools must inevitably inflict psychological harm?

Mr. VAN DEN HAAG: No, sir, not at all—I would in fact think that non-separation would be harmful to both of the groups that are congregated; as long as the levels of learning, the backgrounds, the customs, the moves are as different as you describe them to be, an attempted homogenization would certainly be harmful to both, as well as unsuccessful.

Mr. DE VILLIERS: How do you regard this aspect of the matter by way of comparing the situation in the United States with that in South West Africa, making the assumption, of course, that I have put to you?

Mr. VAN DEN HAAG: Well, in the United States there is certainly a much better case for desegregation because, as I mentioned in my testimony yesterday, there is no separate cultural source for the Negroes who are really, generally, participants in American culture. It does not follow that, even in this case, segregation would be necessarily harmful, but it does follow that I do not see a particular need for it, and certainly no need for imposing it by law. As I mentioned a moment ago, in certain cases—and I think they apply to the majority of Negroes whose parents are not either professionals or generally middle-class—it might be useful, even there, to separate at least temporarily to permit, as I said, an equal level to be established where possible, a similar level between Negroes and Whites; but I certainly would think, to come back to a general question, that the need for segregation in the United States is far less than it would be in a place where Negroes have a Native culture of their own.

Mr. DE VILLIERS: Now, you have been dealing with ethnic groups—membership in ethnic groups. The argument against us seems to amount to this: that rights of individuals are denied when they are treated as group members rather than as individuals. The suggestion appears to be that the emphasis ought to fall on the individual rather than on the group when regard is had to their well-being and social progress. What do you say to that?

Mr. VAN DEN HAAG: I certainly would say that the individual is the ultimate constituent of society and of any social group; the very word "individual", which comes from *individuum*—that which cannot be divided—indicates as much, but I would also say, as Aristotle has already pointed out, that human beings are, in his words, *zoon politikon*—that is, they are social beings; that society consists as much of groups as it does consist of individuals, and to regard human individuals as though they are isolated atoms separated from a particular group would be—and I cannot imagine a single sociologist disagreeing with me on that—a very grave mistake. Human beings become human, as it were, only by

being members of a group. It is from the primary group, the family, in the first place that they become socialized or humanized, that they learn the language, that they learn to co-operate with other human beings, that they learn to control their evacuation and to do and not to do certain things that their impulses would otherwise lead them to do, and throughout one's life every human being except those in insane asylums, who are indeed therefore called, sometimes, "alienated"—that is, not capable of participating in group life—the term for a psychiatrist used to be "alienist"—except for these, we all remain members of numerous social groups and, I would say, this is recognized in law. The law indeed does punish for a violation of law only the individual that has violated the particular legal rule, but it imposes obligations on individuals as group members, and it treats individuals very often not in their quality as individuals but in their quality as group members. Let me give you some illustrations, very simply: liability is often as a group member—a child is in most jurisdictions compelled to support his parents when these parents are no longer able to earn a living. Now, the mere fact that the child is a child of these parents—that is, a member of a group, family—establishes the liability; it is, of course, established also vice versa—parents have to support children, but there you might say that they had these children voluntarily and this was an obligation that they took upon themselves as individuals, perhaps but the child has no choice—he has no way of not having parents, and hence if the obligation is imposed on him of supporting his parents it is imposed on him as a member of a group. Similarly in many States we have legislation referring to groups and sometimes to their physiological and anatomical particularities—for instance, women are in the United States and in many other places, as women, not allowed to work certain hours—in short, they are treated by the law not as individuals but as members of the group that is called "women". I spoke of biological groups—there are other groups, ethnically constituted, in which again the law treats people as group members. Just as I left New York, a few days ago, the papers were speaking of a case where a number of Japanese students were being expelled from the United States for having worked in the United States, in this case as waiters in a Japanese club; what happened is that they are permitted to come to the United States as students, but had not been permitted to work. Now this of course is a specific treatment inflicted on these students as members of the group that we call "Japanese", and similarly, I would say, in many other cases individuals are treated as group members; as an American I will be subject to the American draft—that is, to enlistment or recruitment for military service, which I would not be if I were not a member of the group called "Americans". Again, if I go abroad I am very often not treated as an individual, but treated as a member of a group called "strange foreigners" in the first place, and then specifically "Americans"; in some cases I will need a visa on my passport as an American, and in other cases I may not. My own Government so treats me in many other cases—gives me certain rights, privileges and duties which I have as an American, as a male, as a person in a certain age group that I would not have were I not a member of all these groups.

So I would answer your question in two ways: (1) it is a matter of sociological fact that we are all members of quite a number of groups, and (2) the law does recognize that in many instances. Let me add further that where, for one reason or another, either owing to material

developments or sometimes to laws, where this group membership is altogether disregarded and becomes difficult to maintain, there we have consequences to which I alluded already yesterday, which Durkheim described as "*anomie*" - that is, the feeling of not belonging for the individual, and which in modern literature is often referred to as alienation, and this feeling in turn is certainly regarded by most psychoanalysts as basic to neurotic developments in individuals.

MR. DE VILLIERS: Can it be suggested that the tendency to treat people as group members is diminishing in modern times?

MR. VAN DEN HAAG: I would not think so. I would say—I am speaking of America now, where I think developments are parallel—I think in fact, and somewhat to my own dislike, the tendency is rising. Take for instance workers in a factory, they may no longer decide individually whether to join a union or not; the law may treat them as group members and say that under certain circumstances, they are compelled to join the union merely by working in a particular plant and regardless of their individual wishes. And I have the feeling that the tendency in modern development is rather to disregard the individual in many cases, and to treat him all too exclusively as a group member. There are some technological reasons why that may be advantageous but it would be of a value judgment to decide whether this justified this legal treatment or not.

MR. DE VILLIERS: Now, can you give us the background of what you have just dealt with and tell the Court whether you consider that groups can or will or should be formed on an ethnic basis, and respected and treated by the laws on that basis?

MR. VAN DEN HAAG: Well, Mr. de Villiers, I certainly would not pronounce myself on *should be*, but let us say *are* found on an ethnic basis; this is a matter of fact. This is the very basis of group formation. It is not the only basis, and we do sometimes have group formation which disregards ethnic matters, or is even contrary to them, but most of the time, and in most cases, I would think that ethnic group belonging is the basis for most other group belongings, at least in the United States and I suppose elsewhere too.

MR. DE VILLIERS: Could you give the Court an indication of the type of consequences one could expect when different ethnic groups are brought into unregulated contact with one another?

MR. VAN DEN HAAG: Yes, in a very general sense, I would say that the effects of this, unless the contact is carefully regulated, tend to be the production of the phenomenon that I spoke of as *anomie*. Now, another word, which describes about the same, is social disorganisation, and this can be measured by a number of phenomena. Now, the first one who tried to bring about such a measurement was Emile Durkheim who measured, or tried to indicate that the rate of suicide would be an evidence for the presence and frequency of *anomie*. I have, and I would like to quote here another attempted measurement, which strikes me as very pertinent; it is based on the rate of delinquency. Professor Bernard Lander in a book called *Towards an Understanding of Juvenile Delinquency* and published by the Columbia University Press in New York, measured delinquency rates in the city of Baltimore and he compared the rates as they occurred in 1903 - that is 60 years ago—and as they occurred again in 1940 and 1950. The results, I would like to very briefly quote. In 1903 he found that—

"Delinquency was highest in those sectors of the city that were in the main inhabited by the foreign born."

Presently he finds the following - referring first to the Negro delinquency rates, he finds—

"The Negro delinquency rate increases from 8 per cent. in areas in which the Negro population is less than 10 per cent. of the total population, to 14 per cent. in tracts with a Negro population of between 30 and 40.9 per cent. However, as the Negro population increases beyond 50 per cent. the Negro delinquency rate decreases to 7 per cent. in areas with 90 per cent. Negro population. A similar pattern characterises the white group. As the Negro proportion increases to 50 per cent., the delinquency rate increases. As the percentage of Negroes increases beyond 50 per cent., the delinquency rate decreases, thus when other factors [such as income level, educational level, residential accommodations, and so on, when all other factors] are held constant, delinquency rates in Baltimore are highest in areas with maximum racial heterogeneity."

To briefly paraphrase what I think is reasonably clear from the quotation, what Professor Lander has found, and it is generally confirmed, is that where there is a great degree of unregulated culture contact, there rates of delinquency increase. Where the population is culturally and ethnically reasonably homogeneous, whether it be black persons or white, all other things being equal, the delinquency rate decreases: that is, the delinquency rate, all other things being equal, is a function of ethnic heterogeneity. Of course the explanation for this is very simple. As groups with different mores and so on, come in contact with each other, the authority of the customs and mores of each group, in the minds of its members, suffers from their proximity to different mores which they do not fully comprehend, but which in some way weaken their own. The result is a higher delinquency rate.

MR. DE VILLIERS: Just to get it clear on the record. Is this quotation, which you read to the Court, from Professor Lander's work itself, or is it a passage taken over in another work?

MR. VAN DEN HAAG: I used my own book *Passion and Social Constraint* in which I quote Professor Lander.

MR. DE VILLIERS: Will you give that reference please for the record?

MR. VAN DEN HAAG: It is on page 183 of *Passion and Social Constraint*, of which I am the author.

MR. DE VILLIERS: Now, are there authorities to which you would like to refer on the effect of race mixture, that is, shall I say, where races or ethnic groups are brought into unregulated contact with one another?

MR. VAN DEN HAAG: Yes, quite a number. I would like to indicate first the way groups are formed and what the changed contact may mean specifically. Let me quote in this respect, Professor Glaister A. Elmer of Michigan State College, *Sociology and Social Research*, Volume 39, No. 2, 1954, pages 103-109. Professor Elmer and I quote:

"The real identifications of individual members are anchored in the group. A sense of loyalty and solidarity is generated in them as a natural process which manifests itself in actual behaviour. As individuals become members of a group, the social process of integration is taking place. Besides the individual members of the

group, the integration binds the social values and goals, the psychic characteristics and the in-group symbols with which the individual members become identified. The social identification which evolves thus constitutes the basis of group solidarity, from which results observable, measurable behaviour.

Social identification is the overt and covert manifestation of a 'we' feeling. There must be a personal consciousness of 'belonging to' or 'being part of', which is reflected in the opinion and the behaviour of the persons concerned. Group membership identification implies not an individual *reaction toward a group*, but his reaction as a *functioning element of the group*. This implies a consciousness of kind, a oneness, a lack of social distance." (P. 105.)

That was Professor Glaister Elmer.

Now I would like to refer to this more specifically as it applies to heterogeneous populations by quoting Professor George A. Lundberg, who is a professor of sociology and a former president of the American Sociological Association.

The PRESIDENT: Mr. de Villiers, interrupting you, the witness is quoting other experts. Does he affirm that the views of the other experts, which he is quoting, are his views?

Mr. DE VILLIERS: Mr. President, I think he indicated initially a certain proposition and he is quoting other experts in support of the proposition, but I shall bring him back to that question.

Mr. VAN DEN HAAG: I certainly am willing to assert that those experts I am now quoting do utter opinions which I endorse.

Mr. DE VILLIERS: Thank you.

Mr. VAN DEN HAAG: I would like, on the same subject to quote Professor Lundberg from an essay of his called "Some Neglected Aspects of the Minorities Problem" which appeared in the magazine *Modern Age*, Summer, 1958 (p. 286):

"In every society, men react selectively to their fellow men, in the sense of seeking the association of some and avoiding the association of others. Selective association is necessarily based on some observable differences between those whose association we seek and those whose association we avoid. The differences which are the basis for selective association are of indefinitely large variety, of all degrees of visibility and subtlety, and vastly different in social consequences. Sex, age, marital condition, religion, politics, socio-economic status, color, size, shape, health, morals, birth, breeding, and B.O.—the list of differences is endless and varied, but all the items have this in common: [first] they are observable, [second] they are significant differences to those who react selectively to people with the characteristics in question. [They are perceived as significant differences whatever their objective significance may be.] It is, therefore, wholly absurd to try to ignore, deny or talk out of existence these differences just because we do not approve of some of their social results."

And again, let me quote Professor Lundberg, from a different paper in which he tried to test this theory of selective association by asking high-school students what their preferences were, and observing their preferences in association in work, in dating, in social intercourse and so on, under a variety of circumstances. This article by Professor Lundberg,

appeared in *The American Sociological Review*, Volume XVII, in February 1952, and it is entitled "Selective Association Among Ethnic Groups in a High-School Population". In this, Professor Lundberg states—I am just quoting a few passages, the article is too long to read (p. 34):

"Every ethnic group showed a preference for its own members . . . a certain amount of ethnocentrism [that is, concentration on one's own ethnic group and preference perhaps] is a normal and necessary ingredient of all group life, that is, it is the basic characteristic that differentiates one group from another and this is fundamental to a social structure."

Mr. DE VILLIERS: You have indicated that you agree with the views there expressed.

Mr. VAN DEN HAAG: Yes.

Mr. DE VILLIERS: Could you indicate to us how early this consciousness of kind would start in the human life?

Mr. VAN DEN HAAG: I have made no personal studies on this but I would like to submit for your consideration the studies that have been made by others; let me quote a study by Marion Radke, Jean Sutherland and Pearl Rosenberg, which appeared in the magazine, *Sociometry*, Volume XIII, May 1950, and entitled "Racial Attitudes in Children". The children in question there are of the ages between 7 and 13, altogether 475 Negro children and 48 White children. Allow me to just quote the conclusion of the study (p. 170):

"The White children in all situations and at all ages (seven to thirteen), expressed strong preference for their own racial group. This is particularly the case when the choices between Negro and White children as friends, are on an abstract or wish level [this was done through a picture test]. . . . The inter-racial choice, is limited strictly to the classroom and does not carry over to the community in which the proportions of Negro and White populations are the same as in school. The White children express unfavourable attitudes towards Negroes by assigning the undesirable behaviour characteristics to the photographs of Negro children; this applies again to all age levels."

Now there is another paper which I would like to quote here by Mary Ellen Goodman of Radcliffe College and which appeared in the *American Anthropologist*. It is entitled "Evidence Concerning the Genesis of Inter-Racial Attitudes" and it appears in the October-December, 1946, issue of the *American Anthropologist*. The Goodman study concludes—and I will only read the conclusion (p. 429):

"Preliminary analysis leads to the belief that these children of approximately 3 to 4 and a half years were in the process of becoming aware of race differences and of their implications."

This conclusion is finally supported by one more study I would like to quote: this one is by Catherine Landseth and Barbara Child Johnson, both of the University of California and entitled "Young Children's Responses to a Picture and Inset Test, designed to Reveal Reactions to Persons of Different Skin Colour". This appeared in the magazine *Child Development*, Volume XXIV, March 1953. Again, I will quote merely the conclusion. It is (p. 78):

"Patterns of response to persons of different skin colour are present as early as three years and become accentuated during the succeeding two years."

So if I may now conclude from the views of these experts, and while I repeat, in this particular field, I do not regard myself at least as an empirical worker, it seems that consciousness of kind, particularly as regards skin colour, starts about the third year, about three years, that is, the fourth year, and continues and increases. I would like to add a note here; no present evidence that I know of has been able to distinguish to what extent such consciousness of kind is due to possible parental influence and to what extent it is, as it were, spontaneous. It would be very interesting to find that out but no-one has so far, been able to devise a method that would permit us to make this distinction.

MR. DE VILLIERS: Dr. van den Haag, you have indicated the tendency to recognize ethnic differences and distinctions, a tendency towards separation, living apart, but those tendencies are universal. You have given examples mainly in regard to the United States, about certain aspects of life there. Can you think of other examples which you would like to mention in this context?

MR. VAN DEN HAAG: I think the tendency is universal and I would like to give some examples from Brazil. I have a special reason for that--Brazil is one society where there has been traditionally no legal racial distinction, and it is also a society where, it is well known, a variety of racial strains have not only lived together, but mixed quite freely. I should like now to quote from an article by Professor Emilio Willems, called "Racial Attitude in Brazil", which appeared in the *American Journal of Sociology* in March 1949. The pages from which I am quoting are 403-404, and 406. Professor Willems enquired with a number of people who had advertised for employees under various circumstances in Brazilian papers. He subjected these people to a questionnaire, and his results are as follows (p. 403):

"Of the 245 advertisers, 194 were interviewed. 18 advertisers did not accept Negro servants because of presumed lack of cleanliness; 30 thought black housemaids were always thieves; 14 alleged instability and lack of assiduity; 12 said only that they were used to white servants" . . . etc.

Again, I quote from another passage in the same article, page 403 of Professor Willems. He said that his interviewees felt strongly that they did not wish to take as equals negroes; he interviewed negroes of middle-class standing and (p. 404)—

"they felt strongly that they were not taken as equals. There are many situations in social life where white people refused to be seen with negroes; in such public places as high-class hotels, restaurants or casinos, fashionable clubs and dances negroes are not desired, and there are few whites who dare to introduce negro friends or relatives into such places".

This occurred in Brazil.

May I quote one more instance (p. 406):

"Another questionnaire was connected with the exclusion of coloured persons from certain barbers' shops, restaurants, hotels, and theatres. In 20 cities such exclusion was admitted, while in 10

it was denied. [In one case protests were made by a coloured Army Officer who had been denied service in a barber's shop in a Brazilian city, and] the barber himself implored [the customer and] the crowd not to damage his shop, saying that he was not guilty of any discrimination. Exclusion of coloured people had been imposed upon him by his white customers."

Let me add, Mr. President, that I do not myself subscribe to any of these stereotypes or adverse attitudes felt against Negroes; I am a sociologist, on the other hand, a student of the presence or absence of such attitudes, and I find it interesting to note in this case that these attitudes exist in Brazil, which in the United States is usually popularly upheld as a model of an inter-racial society where such phenomena as are infamous in the United States do not exist.

I would like to support this point further by quoting from an article by Roger Bastide, which appeared in the *American Sociological Review* in December 1957. Professor Bastide writes as follows, on page 691:

"Stereotypes against negroes and mulattoes are widespread. 75% of the sample accept 23 or more stereotypes against negroes. No one rejects all stereotypes against negroes. For mulattoes, the overall picture is somewhat more favourable though very similar. Mulattoes are judged inferior or superior to whites, on the same traits as negroes but with somewhat lower percentages. The most widely accepted stereotypes are lack of hygiene (accepted by 91% for negroes), physical unattractiveness (87%), superstition (80%), lack of financial foresight (77%), lack of morality (76%), aggressiveness (73%), laziness (72%), lack of persistence at work (62%), sexual perversity (51%), and exhibitionism (50%)."

I wish to emphasize once more that these are stereotypes, according to these scholars widespread in the percentages quoted in a sample of white Brazilians, held against people classified by these white Brazilians as Negroes or mulattoes within Brazil.

MR. DE VILLIERS: I shall later ask you about tendencies of increasing or decreasing the holding of such stereotypes in various circumstances, but first I should like to ask you whether you wish to refer to other examples of the same thing, say, outside of the western hemisphere.

MR. VAN DEN HAAG: Well, my notions of geography are a little vague. Let me refer to some instances in Russia. The Russian Government has purported, at least for a very long time, to be bitterly opposed to all such racial and ethnic stereotypes, and it has indeed taken legislative measures against various group hostilities, or so we are told. Furthermore, it has been the contention of the Russian Government that such prejudicial attitudes are connected with a system of economics other than that prevailing in Russia, and would necessarily disappear there. Nonetheless, I wish to point out that American Jewish leaders have contended over the years, and are contending now, that there is widespread anti-Semitism in Russia, and that it is supported at least by the lower echelons of the Government and possibly also by the higher ones.

With your permission, Mr. President, I would spare you reading a whole article, but I would like to put it into the record. The article I have in mind is written by Mihajlo Mihajlov, a Yugoslav who has recently indeed had some difficulties with the Yugoslav Government by publishing his travel diary in the Soviet Union. This gentleman is himself a declared

socialist, a Marxist, and he is also not a Jew, and he describes at considerable length instances of anti-Semitism, official and unofficial, that he found in Russia (*The New Leader*, 7 June 1965, p. 7).

I also would like to call your attention, Mr. President, to the facts that have been quite recently discussed in the world press that in Russia there certainly was no Negro problem because there were no Negroes, to speak of, but as a number of students from a variety of the new African countries were invited to study at Russian universities, it was found, according to these students returning to their homelands, that the Russians exhibited a considerable amount of anti-Negro prejudice and resentment. In fact, a group of more than a hundred . . .

The PRESIDENT: Mr. de Villiers, perhaps you would indicate to the Court to what particular part of the case this is directed. It seems to be a little far afield, does it not?

MR. DE VILLIERS: Well, Mr. President, perhaps the measure of detail . . . As I have indicated, I am asking the witness next, after describing these phenomena as he observes them in various parts of the world, what lessons are to be learned from them with a view to determining upon governmental policies in particular types of situations.

The PRESIDENT: It does not involve, does it, going into the detail which is being gone into?

MR. DE VILLIERS: Yes, Dr. van den Haag, it is perhaps not necessary to go into all the detail but is there anything that you wish to add in general to that point?

MR. VAN DEN HAAG: The only point I can make very briefly is, that as you introduce a new group, ethnically different, you will, everywhere in the world, find the creation of ethnic prejudice, attempt at ethnic separation, unless this introduction is preceded and continuously associated with a very careful governmental regulation that permits the introduction to be gradual and to allow for acceptance by each group of the alien groups.

MR. DE VILLIERS: Now, how do you explain the universality of this phenomenon, this tendency of different ethnic groups to want to associate with themselves, to be separate from others?

MR. VAN DEN HAAG: Well, you are asking me a theoretical question I think I will give a theoretical answer, and, if I may, I would like to start by quoting an article by Professor Gustav Ichheiser entitled "Socio-Psychological and Cultural Factors in Race Relations", which appeared in the *American Journal of Sociology*, March 1949.

The PRESIDENT: Mr. de Villiers, again I must ask, in respect of evidence such as this, does the witness indicate (he says this is a theoretical matter) that although he is expressing the views of somebody else, does he concur in those views, because that must be established. Otherwise, the evidence would be worthless.

MR. DE VILLIERS: Thank you, Mr. President. Will you please indicate, Dr. van den Haag, what your views are about the matter on which you are about to quote?

MR. VAN DEN HAAG: I fully agree with Professor Ichheiser's view. I am quoting from page 395 of the article that I mentioned:

"People who, in a significant way, look different to one another have a tendency to consider one another as not only looking different but also as being different, and they have this tendency because our socio-sensory perception of the physical appearance of other people

is essentially symbolic in character. The external personality is immediately perceived as a manifestation of the inner personality which it actually or supposedly reveals and represents."

May I emphasize that neither Professor Ichheiser nor I feel that one's physical appearance necessarily discloses one's personality. But what Professor Ichheiser and I both assert is that the impression one has from the physical appearance of someone else tends in most cases to lead to a judgment, however untrue it may be, about the personality of the person one has encountered.

I would like to quote further from Professor Ichheiser, at page 396—the same article:

"Since members of different racial groups, like White people and Negroes, look significantly different, they have a very strong tendency to consider each other not only as looking but also as being different and, consequently, as belonging to two different groups. The degree of disparity between the bodily appearance plays, as experience shows, a very important role. They have this very strong, possibly irresistibly strong, tendency whether they are explicitly aware of it or not, whether they honestly admit it, or hypocritically deny it, whether they would be able to define what this being different means, or not. This means also that this basic socio-sensory perception of difference in physique plays a powerful role in the conscious, and probably still more powerful role in the unconscious group identification. Looking at each other is the most primary form of conversation. Between White people and Negroes the initial and basic part of this conversation is concluded before they start to talk with one another. In spite of Marxian theories we are unconsciously more deeply identified with those who talk as we talk, behave as we behave, look as we look, than with those with whom we have identical economic interests. Again, whether we are aware of it or not, whether we admit it or not, 'we', 'you' and 'they' mean certainly one thing to the White person and another thing to the Negro. To put it another way, our bodily appearance, our external personality, constitutes obviously an integral part, in terms of social identification, an extremely important aspect of our total personality. As a matter of fact, it is the core of our social image. Consequently, in terms of social psychological reality, people who look different are different. I think we should realistically admit this fact and discontinue to deceive ourselves and one another. Nobody, in fact, is seriously able to believe that White people and Negroes belong to the same social group, because our eyes tell us that this is not true, and the eyes are our sense of reality. In everyday life we believe what we see. Thus, the real segregation is not in space, but in socio-sensory perception, and its basis is not a cultural pattern or social system, or prejudice, but the nature of our perceptual experience."

I want to add one more paragraph to this, from page 398:

"The tendency of White people to consider Negroes as being different, as belonging to another group, is much more deep-seated than the tendency to consider them as being inferior, or whatever else is suggested by the cultural pattern. Hence, although it is not easy and will not be easy to convince White people that Negroes

are not inferior, this is still easier than to convince them that they are not different."

MR. DE VILLIERS: Do you understand the author to suggest that they are in fact not different?

MR. VAN DEN HAAG: No, I do not think that that is what the author is suggesting. He is suggesting that in the sense of social psychological reality they are perceived as different. I do not think that he deals with whether such differences do objectively exist. As a sociologist he is interested in people's perception of each other, not in the separate, say, perception by scientific instruments. He is interested in the social perception that we have of each other, so he makes no judgment on whether they truly are different, though certainly it is implied in his writing that he makes the judgment that they are not in any way either inferior or superior—a view that I also hold.

MR. DE VILLIERS: But in referring to the social perceptions of differences he refers to the fact that those do not necessarily correspond to what the true position is: is that how you see it?

MR. VAN DEN HAAG: I think that is implied, yes.

MR. DE VILLIERS: What happens when there are attempts at assimilation of one group with another, depending, of course, on particular circumstances? Could you indicate to the Court what factors are involved?

MR. VAN DEN HAAG: I really think that I have very little to add to what I have already said before. There are circumstances when this can be successfully accomplished, when it is carefully regulated, when there is a lot of groundwork laid, when it is done slowly, when it proceeds by mutual acceptance. I think the attempt to do so by coercion is not likely to be successful, and if it were so to speak legally objectively successful it would lead to very unfavourable psychological consequences for the individual group members. As I mentioned, it would lead to such things as *anomie*, connected with a high rate of delinquency, probably a high rate of mental disease and neurosis—I say probably because we have not been able to measure that statistically—and so on.

MR. DE VILLIERS: Have you again a quotation from Dr. Ichheiser that you wanted to refer to on this subject?

MR. VAN DEN HAAG: Well, yes; this would refer to the attempt that is sometimes made by members of one group to, so to speak, leave that group where this is legally possible. I think that I mentioned before that in many cases this is legally not possible or materially not possible, but, for instance, it is possible, legally, for a Negro in the United States to try to assimilate and to regard himself as a member of the white group. Now if his skin colour is very dark, such an attempt is unlikely to succeed because there would be very visible signs of distinction. But sometimes when the skin colour is reasonably light such attempts are made, and they are known amongst sociologists as attempts at "passing". Professor Ichheiser, and I am now referring to page 309, puts it this way:

"If Negroes would refuse to identify themselves consciously with Negroes as a sub-group then they would develop a kind of collective neurosis, as do other minorities too, for the conscious 'we' would in case of such an attitude be persistently in conflict with the unconscious 'we', and this inner split would invariably reflect itself in different pathological distortions of the Negro personality."

My own comment on this is, generally speaking, that if one's external identification does not correspond with one's internal identification there is of course a strong conflict which may lead to pathological phenomena.

MR. DE VILLIERS: Do I understand you to mean— you can correct me if I am wrong—that even where it may be legally possible, even where it may be materially possible, then still psychologically and sociologically it is extremely difficult for a member to quit his group?

MR. VAN DEN HAAG: You are entirely right, yes.

MR. DE VILLIERS: Now you were dealing with traditions, with notions, with inclinations: are they not all created by human beings and is there not an argument which runs to the effect that when you can teach certain inclinations they can again be untaught?

THE PRESIDENT: Mr. de Villiers, I do not think you ought to lead the witness. That was a leading question.

MR. DE VILLIERS: No, Mr. President, I am putting a proposition to him which I do not agree with. I am asking him for his comment on the proposition.

THE PRESIDENT: Well you could put it another way, I should have thought.

MR. DE VILLIERS: The argument is sometimes used to the effect that when there are inclinations on the part of human beings they must have been taught and they can again be untaught. What do you say about that proposition in the context of our discussion?

MR. VAN DEN HAAG: There are two points which perhaps I would make. First let me distinguish—when you say "taught", if you mean formal teaching, such as we have in a school, I would certainly think that what has been taught in a school can in a sense be untaught; but if you mean by "taught" something that is indeed learnt without being formally taught, then your proposition that that which human teaching or learning has initiated can also be eradicated by a different sort of human learning I do not think is correct. Language, for instance, is learnt informally, you are not born with it, yet any attempt deliberately to change people's language habits has been, although individually quite often successful, collectively unsuccessful. Grammarians, for instance, for many years have been trying to impose a particular linguistic use in many languages on people at large and they have succeeded with some of their pupils but they have not succeeded in influencing the development of language as a whole. Indeed, I would say that the general idea that what human beings have created they can also uncreate unfortunately is not altogether true.

If you look at such phenomena as war, for instance, which as far as I know no one likes and is certainly a type of human action, nonetheless, we have not found a way so far of preventing it, and as we are talking several wars are going on in the world. So I would say that the fact that it is a learned type of behaviour, and I would agree if you speak of racial matters that it is a learned type of behaviour, at least we have no evidence that it is innate, but from this fact it does not follow altogether that it can be unlearned, so I would myself believe that it could be modified.

Let me add another point. When the behaviour, however arrived at, is functionally necessary, so that it serves within the group a certain social or psychological function, then I think it is pretty much and very nearly impossible to make people unlearn it. When, on the other hand, it

is behaviour that could be replaced by a different kind of behaviour that would serve the same function, or would permit the group to continue to function, then I think the chances of unlearning that behaviour and replacing it with a different kind are better.

Mr. DE VILLIERS: Could you give an example of cases where you think it may be functionally necessary?

Mr. VAN DEN HAAG: Well, I think group identification as we have now discussed it several times is functionally necessary, and I do not think that it is possible, as Professor Ichheiser has also stated, to make people believe that there are no differences between different ethnic groups. The particular prejudices that people have built up about particular ethnic groups possibly can be unlearned or at least be modified not, in my opinion, probably by formal learning but by a variety of social agencies. Although the feeling and the prejudice that a particular group is inferior or incapable and so on, can possibly be unlearnt and it will take quite a while, the feeling of differentiation, in my opinion, cannot, because that is functionally in the nature of human groups.

Mr. DE VILLIERS: Could you then give an indication to the Court of what you think the role of education could be in the shaping of human relationships, especially across the lines of ethnic group formation?

Mr. VAN DEN HAAG: Let me point out that very great hopes were held for education by most authorities until about 10 or 15 years ago, when a number of studies were made, of which I will quote one, which indicated that education in the formal sense has been quite ineffective, even in removing the more gross stereotypes and prejudices. I would like to add that this does not make me altogether pessimistic on the possibilities of education, but it makes me feel that we ought to consider more carefully what a prejudice consists of, and in particular we ought to bear in mind that the concrete expression of the prejudice is usually a rationalization, that is a formulation in cognitive form of what is in effect a pre-existing feeling or emotion; and that we are unlikely to achieve anything by giving cognitive information. What we have to attack is probably the feeling or the emotion that predisposes to the acceptance of cognitive information or misinformation—that makes the person who has that emotion select his information so as to serve the emotion. And as to how to do that I am afraid I am not altogether able to give a prescription and no one else so far has.

But let me first quote from Charles Stember, Professor of Sociology at Rutgers University, that is the State University of New Jersey, from a book of his called *Education and Attitude Change*, which was published by the Institute of Human Relations in New York in 1961. I quote from page 168:

"Most research suggested that the educated were less prejudiced, but the present study finds that on many issues the educated show as much prejudice as the less educated, and on some issues they show more. The educated are more likely to hold certain more highly-charged derogatory stereotypes, they favour informal discrimination in some areas of behaviour, reject intimate contacts with minority group members."

I am now quoting from page 171:

"As we go up the educational ladder old images of minorities are replaced by new ones, often no less harmful. Covert discrimination

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continues to be acceptable, and most important perhaps, the desire to keep minorities at some social distance remains."

Page 173:

"The influence of education is more superficial than profound, reaching most strongly those aspects of prejudice which are entrenched in the normative system."

And the conclusion, more or less, on page 180:

"When the issues are sensitive or controversial, the effect of education is either minimal or inverse."

Finally, on the same page:

"The effects are usually strongest where education tends to set a group more or less distinctly from its environment. The evidence suggests that the effect of education on the whole is minimal."

Now, I would like to tell the Court to what extent I endorse the passages I quote. I certainly do endorse Professor Stember in general. I am not quite as pessimistic myself as he is; I think his study reflects correctly what he did find; similar studies have been made and have led to the same result, but I think that if we were to try to proceed with different methods of education, and possibly different educational agencies, our chances of reducing prejudice might be better.

Mr. DE VILLIERS: To what extent could you say that these views that have just been stated about education are generally held or otherwise?

Mr. VAN DEN HAAG: Well, they are now quite generally accepted among sociologists, but this is a fairly recent development. Ten or twelve years ago the opposite view was held.

Mr. DE VILLIERS: Now, could you explain why—as you have indicated to the Court—prejudice is so hard to eliminate either by education, by de-segregation, or by both, when they are taken by themselves?

Mr. VAN DEN HAAG: I would say we know very little really about the basis of prejudice, but I would like to make a distinction. Some of it arises from mere ignorance, and then I think by cognitive information could be dispelled. But the major part of it arises the opposite way, would say; it is not ignorance that causes the prejudice, but rather the prejudice that causes the ignorance. It is the prejudiced person who does not absorb information that he does not wish to absorb. I do not believe that this has much to do with segregation or de-segregation in the sense that de-segregation would remove the prejudice.

Let me indicate why. It was only a few hundred years ago that literally hundreds of thousands of elderly women were burned in western Europe, particularly in Germany, as witches. These women lived in the villages in which their neighbours insisted that they had seen them riding on broomsticks and doing all kinds of things that, according to what we know today, they could not possibly have done; yet there is good reason to believe that these neighbours were in good faith; they did not lack contact with these women, they were not segregated from them. What happened is simply that these women were old and seemed just a little strange and different to the villagers and the rest of the fantasy seemed to follow.

The church in many of these cases tried to avoid such witch burning and so on, but gave in to popular pressures.

The PRESIDENT: Mr. de Villiers, I really think we are going a bit far

away from the issues of this case, with witch-burning and so forth.

MR. VAN DEN HAAG: Well, that much could, of course (the case took place in Germany) indicate that prejudice may arise despite reasonably intimate contacts. I want to make it very short; just let me add that we know very little about how a preference, and a negative preference, may arise; we do know that generally people prefer people that they think are of their own kind, that they perceive as people of their own kind, and that prejudice arises when people of a different kind seem to threaten the identity of the people who hold the prejudice. The more identification through group membership is felt to be threatened the higher the intensity of the prejudice. That much has, I think, been fairly generally established. When people feel fairly secure in their identification as group members, when they do not feel that the identity of the group is threatened, then their prejudice is lower; hence, when, there is physical or social distance.

MR. DE VILLIERS: Are there circumstances in the United States in which it has been possible to observe whether separation may or may not have positive consequences—consequences to the good?

THE PRESIDENT: Mr. de Villiers, the question as you have put it would seem to be not admissible. Whether there are circumstances existing in the United States which lead to this or that can only be relevant if the certain circumstances of which the witness is aware lead him to some conclusion in relation to this case. We are not concerned about circumstances as such in the United States of America.

MR. DE VILLIERS: Thank you, Mr. President. That I intended to imply in the question, but I agree, I could word it more specifically.

Are you aware of circumstances in the United States which could, in a sense relevant to our discussion, have some bearing on the question whether separation could lead to good consequences or not?

MR. VAN DEN HAAG: There are a number of communities which are practically all Negro communities and in which there is a fair degree of isolation. Of course, in the United States isolation is never complete. I have not studied these communities personally, but I have looked at the literature and I would like to offer the conclusions of two writings on this, the first by Professor Mozelle Hill called "A Comparative Study of Race Attitudes in the All-Negro Community in Oklahoma"; this appeared in the magazine *Phylon* in the third quarter of 1948, and I am quoting from page 268, which contains this conclusion:

"An individual residing in the all-negro society will have a much higher regard for negroes. He will be more equalitarian in his attitudes towards them, and thus more favourable in his expressions towards his race. It appears safe to conclude that the all-negro youths have a higher opinion of negroes, due to the absence of pressure of the white man, combined with their essentially middle-class ideology."

This is the conclusion of Professor Hill from his study of an all-Negro community in Oklahoma.

MR. DE VILLIERS: And what is your view about this?

MR. VAN DEN HAAG: It seems, on theoretical grounds, extremely likely that Professor Hill is right, but as I have said, I have not made a study directly of such a community. As I have mentioned before, I feel that isolation is in many cases favourable to identification of each group, so I would tend theoretically to feel the conclusion is likely, but I have

not studied the group. Let me add one more quotation by Professor Allison Davies, from his article "Racial Status and Personality Development", which appeared in the *Scientific Monthly* in October 1943; I am quoting from page 358:

"Where the social group of the racially subordinate individual is highly organized and integrated, as in the Little Italies and Chinatowns, or in many southern negro communities, its members will usually have relatively less psychological conflict over their racial status."

And again, at page 359:

"An individual's racial status may be expected to have a marked effect upon his personality if his race is subordinated in community relationships [he means informal relationships here], if his group is ashamed of its culture and seeking the culture of the dominant group, and if it has no integrated society of its own."

The age of an individual is a crucial factor in determining the scars of racial status upon his personality. The American Youth Commission's recent study of personality development among negro children in southern cities revealed that their racial status had a somewhat minor influence upon their personalities"—

and this is, he indicates, because—

"during both the first and second decades of life these children were more deeply concerned with, and emotionally influenced by, their family, their play groups, their school and Church, than by their consciousness of their subordination to whites. This fact I attribute to the relative lack of direct contact with the white world at that age."

These two authors seem to maintain, as I understand them, that as far as the personality development of Negroes is concerned, it benefits when there is a rather high degree of isolation from Whites, at least in their early years.

MR. DE VILLIERS: Now, considering these various tendencies in human behaviour and human reactions, to which you have referred, do you consider that the outlook about relations between people is an entirely pessimistic one, or are there constructive lessons to be learned from this subject?

MR. VAN DEN HAAG: Well, there are certainly lessons to be learned. I do not know to what extent we have been able to profit from them. If I understand you correctly, you asked about my own conclusions?

MR. DE VILLIERS: Your own conclusions, yes, and particularly in regard to governmental policies in particular situations, or you might differentiate between those.

MR. VAN DEN HAAG: Well, I would put it this way. The greater the cultural differentiation, the more both groups have a culture of their own, the less I would urge any immediate and sudden homogenization, the more I would want the two groups to remain relatively isolated from each other and, if necessary, I would go so far as to propose that this isolation be undertaken by legal measures for, if it is not, I would say that the technologically less advanced group would be simply overrun by the more advanced group. For instance, American Indians were not, at first, legally isolated from the non-Indian Whites and the major effect

of that was that they were immediately corrupted with alcohol and other things—that is they took on habits by using activities and materials that arose from White culture—which were incompatible with their own culture and which led to the destruction of the Indians as a social group, and almost as a race. This, I think, should be avoided by all means and I should say that sometimes legal measures are probably useful for the protection of the culture of the group that is not technologically advanced.

In the United States itself—well, I do not think that is too relevant, perhaps I should not go on to it.

Mr. DE VILLIERS: What significance do you, in general, attach to the factor of a group considering itself, or its identity, or its standard of life, threatened, or not, by another group?

Mr. VAN DEN HAAG: When it does, I think the amount or intensity of prejudice tends to rise. That is all I have to say on that.

Mr. DE VILLIERS: And would you say the contrary is true?

Mr. VAN DEN HAAG: Yes. The more secure—and this incidentally applies to individuals as well. We have quite elaborate studies of that by a number of authors such as Marie Jahoda, and others—the major book, which I would not uncritically endorse, but which certainly in part is correct, *The Authoritarian Personality*, with regard to individuals found the more the individual feels his status as a group member, and within the group, threatened, the higher his degree of prejudice, and I would think that holds for the group as a whole too.

Mr. DE VILLIERS: Now I should like to conclude by asking you to what extent the views you have been expressing do, or do not, find general acceptance in your field of learning? First, could you give a general indication how the conclusions at which you arrive stand in your field of learning?

Mr. VAN DEN HAAG: Well I can make this rather simple. Most of my colleagues, I think, are unwilling to accept my policy views, that is, my general conclusions. They are contrary to the prevailing ideology in the United States; they are contrary to what I have attempted to call sociological fashion, which 50 years ago insisted that differences existed that have since been found not to exist and which now insists that differences do not exist which I think do exist. Thus my views are unfashionable and not accepted inasmuch as they refer to proposed policies. But, as far as the arguments are concerned and the facts that I have today presented to this Court, I know of not a single one that I would think is seriously contested by my colleagues.

Mr. DE VILLIERS: Could I ask you specifically, on a question of what constitutes a human group—

Mr. VAN DEN HAAG: You do not want me to repeat what I

Mr. DE VILLIERS: No, no, I wanted to ask you what the general state of—

Mr. VAN DEN HAAG: I think the views I have expressed, express pretty much a consensus of sociologists. There are always variations of emphasis, and so on, but I think, on the whole, that would be generally accepted.

Mr. DE VILLIERS: On the phenomenon of identification?

Mr. VAN DEN HAAG: I think the same is true.

Mr. DE VILLIERS: On reactions of group members to members of other groups visibly different?

Mr. VAN DEN HAAG: I think my conclusions are generally accepted. I think there may be dissent on what should be done about it.

Mr. DE VILLIERS: On the question of the value of group membership to the individual?

Mr. VAN DEN HAAG: That is generally accepted.

Mr. DE VILLIERS: And the difficulty of quitting his group?

Mr. VAN DEN HAAG: That also is generally accepted.

Mr. DE VILLIERS: The question of the psychological factors that may be experienced on an attempt being made to quit a group and to become assimilated in a different group?

Mr. VAN DEN HAAG: Rather few people have worked on this, but I know of no dissenting opinion.

Mr. DE VILLIERS: On the question of the reaction of groups to situations of threat, or what they perceive to be a threat?

Mr. VAN DEN HAAG: This is now generally accepted both by sociologists and psycho-analysts.

Mr. DE VILLIERS: On the effect of education, in the way you have described?

Mr. VAN DEN HAAG: Yes, by now this is generally accepted. Such people as Professor Lazarsfeld of Columbia, and so on, who used to hold a different view, no longer do.

Mr. DE VILLIERS: And, finally, on the positive values that could be attached in particular circumstances to separation or segregation?

Mr. VAN DEN HAAG: Well that is a more controversial question, and I think rather few (in fact I cannot recall anyone) have written on this. I think one reason that, at least American, sociologists are unwilling to write on this presently is precisely that they do not want to come to conclusions that are contrary to the evidence, but they also do not wish to state the conclusions that are conforming to the evidence because these are, as I put it, quite unfashionable. I have quoted, just a moment ago, two (incidentally Negro) sociologists—Professor Hill and Professor Davis—who favoured isolation, but I should note that (I gave the dates, I believe) Professor Hill's article dates from 1946 and Professor Alison Davis's from 1943. I think that today a sociologist who makes the same investigation and came to the same result, I think would be reluctant to publish it.

Mr. DE VILLIERS: Yes. What I am asking you is about your views, which you have expounded, as to the positive values that may attach to differentiation, or separation, in particular circumstances, in general and not merely in the United States. Are they in any way in conflict, as a matter of principle, with views held in your field of science?

Mr. VAN DEN HAAG: They are not in conflict, certainly. Let us say few people in academic circles would be quite willing to go out and subscribe to them at this point for various reasons that I think are less scientific than they are ideological or political, but I know of no contrary evidence and I know of no scientific people stating that the contrary would be more favourable.

Mr. PRESIDENT: I call upon the Agent for the Applicants.

Mr. GROSS: Mr. President, the transcript of the verbatim record of yesterday's Oral Proceedings was not available, for understandable reasons, until our arrival at the Court this morning. There has been no opportunity during the course of the morning to read the transcript; nor, of course, has there been an opportunity to survey the transcript of

Prof. LOGAN: I wouldn't say it was irrelevant.

Mr. GROSS: You would not say it?

Prof. LOGAN: I would not say it was irrelevant.

Mr. GROSS: I see.

The PRESIDENT: Would it be convenient, Mr. Gross, if we discontinued at this stage?

Mr. GROSS: Mr. President, may I make a statement to the Court?

The PRESIDENT: If it is in relation to the examination of this witness,

Mr. GROSS: It is in relation to the examination of this witness.

The PRESIDENT: Very well then.

Mr. GROSS: It is really a matter of the balance of convenience of the Court. I am aware of the fact that the testimony of other witnesses is impending and I think that under the circumstances, entirely on my own responsibility, sir, I would say that perhaps I will reserve the right, if you permit me to, to continue cross-examination if it were proper to ask whether Members of the Court also wish to address, because I would not wish to keep the witness here merely for my convenience over the weekend.

The PRESIDENT: Well, it is now one o'clock, Mr. Gross, and I think the witness will have to come back on Monday in any case. And then there is Professor van den Haag who is coming on Monday for cross-examination by yourself. I think perhaps the most convenient course is to interpose Professor van den Haag, but the Court is in the hands of the Parties. The intention was to endeavour to enable Professor van den Haag to return on Monday, I gather, to New York or elsewhere in the United States and, for that reason, I think perhaps it is better to interpose Professor van den Haag. Would that inconvenience you?

Mr. GROSS: Not at all, Mr. President. My hesitation in bringing the matter up at all derives from the fact that I only have 10 or 15 minutes more and I just wanted to raise the balance of convenience.

The PRESIDENT: I think 10 or 15 minutes more is too much.

Mr. GROSS: Thank you sir.

The PRESIDENT: The Court will adjourn until Monday. It is understood that Professor van den Haag will be in attendance on Monday morning at 10 o'clock. Is that correct Mr. de Villiers?

Mr. DE VILLIERS: Yes, Mr. President. That is correct. We would not like to keep Professor Logan unduly if we knew that the rest of his cross-examination and, say, questioning by the Court would not take longer than half an hour at the utmost, perhaps we could dispose of this witness first and then carry on with Professor van den Haag. But I would suggest, if it meets with your approval, Mr. President, that we leave that to a discussion between the Parties and perhaps we could advise you whether we could come to any agreement about it.

The PRESIDENT: I think that is a more convenient course. Certain Members of the Court desire to ask questions but I do not expect that they will run into great length of time, so if it is more convenient to the Parties to continue and dispose of the evidence of Professor Logan first thing on Monday morning, then that will meet with the convenience of the Court. But we are anxious, at the same time, to ensure that we do dispose, if we can, in the morning also, of Professor van den Haag.

Mr. DE VILLIERS: We shall keep that in mind.

The PRESIDENT: If that can be done, if it can't be done then we shall have to go over into the afternoon, so that we do dispose of Professor van den Haag's evidence within the day. That is understood then?

[Public hearing of 12 July 1965]

The PRESIDENT: The hearing is resumed. I regret to state that Judge Badawi has not recovered from his indisposition and will be unable to resume sitting before the recess for summer. Judge Koretsky is suffering from a slight indisposition following an accident. He hopes to be here later in the morning.

I understand that the Parties have agreed that Professor van den Haag should first be called. If so, Professor van den Haag should come to the podium.

Mr. DE VILLIERS: Mr. President, before cross-examination begins may I say something to the Court? Professor van den Haag asked me to intimate that there are two matters on which he would like to make a brief statement to the Court before cross-examination starts. One concerns an impression which he got from reading the record for correction purposes. The record in one respect conveys an impression, or may be read as conveying the impression, which he did not intend to convey. He would just like to rectify that. The other matter concerns a statement which he made in regard to a report which appeared in the *New York Times*; he did not have the source available at the time and he was asked to bring it. He would like to make a statement on those two matters before cross-examination.

The PRESIDENT: Are there any objections?

Mr. GROSS: No, Mr. President.

The PRESIDENT: Very well, Professor van den Haag.

Mr. VAN DEN HAAG: Mr. President, on page 160, *supra*, and also on pages 155-156, *supra*, of the verbatim record for 23 June, I made certain statements which may make it appear . . .

The PRESIDENT: On page 160, is it?

Mr. VAN DEN HAAG: And pages 155-156, of the verbatim record of 23 June, I make statements which may make it appear as though I, myself, testified in the *Brown* case, which was decided by the Supreme Court. I just wish to state that I did not testify in that case. Indeed, in that case no experts were used on the side of the defendants, or respondents, who rested their case on the *stare decisis* of *Plessy v. Ferguson* and therefore did not call any experts. My own testimony, to which I refer in the two pages, occurred after the *Brown* case, and in application of it. I wanted to have this clear for the record.

The second point: when I last had the honour of being here, I referred to a statement which I attributed to Professor Clark. This is on page 163, *supra*, of the record of 23 June.

The PRESIDENT: Where does it appear on page 163?

Mr. VAN DEN HAAG: It is in the middle paragraph. In this I stated that I read Professor Clark's advocacy of resegregation in an interview that he had given to the *New York Times*. My memory was somewhat deceptive, what I actually read occurred in the Judgment of the United States District Court in *Stell v. Board of Education*. In a footnote (I think I handed this document in already but I will do so again) on page 13 there is this reference which, with your permission, I will read.

"Dr. Clark, in the interview, suggested special remedial classes for Negroes in Northern schools, in effect a suggestion of resegregation as an educational necessity."

The PRESIDENT: Mr. Gross?

Mr. GROSS: Forgive the interruption, but I am not certain to whom the quotation is attributed, that the witness has just read.

The PRESIDENT: To Professor Clark I think.

Mr. GROSS: But I mean whose characterization was it . . .

Mr. VAN DEN HAAG: Yes, that was the characterization of Judge Scarlett in the federal court in the case of *Stell v. Board of Education*, which I only dimly remembered. Since that time I looked up the interview, which is paraphrased in the case, and this interview which appeared in the *United States News and World Report* for 10 June 1963 has a passage which must be the passage to which the federal court referred, which is very brief so I may read it to you.

Professor Clark tells the interviewer that, and this is on page 49 of the *United States News and World Report* for 10 June 1963:

"I think that in the schools of America today there must be a special type of crash programme to see that Negro pupils are brought up to an acceptable and respectable level of academic performance."

The interviewer then asks:

"Do you want Negro pupils to be given special treatment because they are Negroes?"

to which Professor Clark replies:

"Well, Negroes are being treated as Negroes now, to damaging effect, so if they must be treated as Negroes for beneficial effect this must be done."

Obviously the Judge in the case I just mentioned interpreted this as an advocacy of resegregation by Professor Clark and I paraphrased the Judge's opinion. Having looked at the original document, I wish to make it clear that this was apparently a judicial interpretation of the document and I am not as sure as Judge Scarlett was that this is really what Professor Clark meant. Therefore I should like to modify the statement I originally made. I stick to my own view that segregation would be useful for educational purposes, but I do not wish to attribute this view to Professor Clark. I am not altogether sure what view he would hold on the matter at this time. Thank you.

The PRESIDENT: Mr. Gross, will you cross-examine?

Mr. GROSS: Thank you, Mr. President. Dr. van den Haag, incidentally I notice that learned counsel for the Respondent refers to you as van den Hague; which is the correct pronunciation?

Mr. VAN DEN HAAG: It depends in which country I am in.

Mr. GROSS: In Holland?

Mr. VAN DEN HAAG: van den Haag.

Mr. GROSS: I shall refer, Mr. President, with your permission, to the page citations in the first instance to the verbatim record of 22 June and, for the Court's convenience, shall simply refer to "at page so and so" without referring to the verbatim each time, unless the President wishes it otherwise.

The PRESIDENT: Is it from the same verbatim?

Mr. GROSS: Yes, Mr. President. When I switch over to another verbatim, as I shall subsequently, I will endeavour to advise the Court. Is that satisfactory, sir?

The PRESIDENT: Certainly.

Mr. GROSS: Dr. van den Haag, I should like to address a few questions to you, if I may, to complete the record with respect to certain answers you gave in response to one or two questions. You stated that you were born of Dutch nationality. You were born in Holland, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: And then you went to the United States. You are an American citizen, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: I should like to ask you a few questions in connection with your appearances as expert on matters concerned with segregation in the United States, according to your testimony at page 135, *supra*. You testified that you had appeared as an expert three times in the United States federal courts and once or twice in New York State courts, and I understood you to say that these cases concerned segregation?

Mr. VAN DEN HAAG: The ones in the federal courts. The New York State cases were cases in which I qualified as an expert in sociology but had nothing to do with racial matters.

Mr. GROSS: I see sir, thank you. Now, with respect to the three appearances as expert in the federal courts, could you, without trespassing too much on the honourable Court's time, indicate very briefly the major issue in each of those cases?

Mr. VAN DEN HAAG: Yes. In each of these cases a group of local citizens appeared as interveners in court cases brought by the parents of Negro pupils who wished that the *Brown* decision be applied locally, a desire resisted by the School Board, and in which the party for which I appeared as an expert took part. My testimony in all these cases referred to the factual basis of the *Brown* case which, as you will recall, refers to "modern authority" and to psychological experts, if my memory does not deceive me, which would have shown that segregation is inconsistent with the Fourteenth Amendment of the United States Constitution inasmuch as it refuses the equal protection of the laws to Negro pupils. This was based on a demonstration of injury, attributed to "modern authority" and I discussed the proof for such a demonstration of injury and indicated that it very clearly had not been proved, that indeed the major evidence given by Professor Clark was clearly indicating that desegregation is injurious to Negro pupils rather than segregation.

Mr. GROSS: And what was the disposition of those cases, if you please, sir?

Mr. VAN DEN HAAG: If my memory does not deceive me, two were won in the courts in which I appeared, the third was lost—that is, in two the School Board won and in the third the applicant won—and in the Court of Appeals, as far as I remember, one or two are still pending and one was overruled because the Court of Appeals felt that the factual proof did not interfere with the Supreme Court's judgment in *Brown*, which the Court felt was based on legal rather than factual considerations.

Mr. GROSS: Do I correctly understand, sir, that in each of those cases, then, that you mentioned, you were testifying as an expert witness against the factual basis upon which you assumed the Supreme Court's decision in the *Brown* case rested?

Mr. VAN DEN HAAG: That is quite correct.

Mr. GROSS: May I ask, sir, were you a paid professional witness in each case?

MR. VAN DEN HAAG: I did submit a bill in two of the three cases.

MR. GROSS: And you appeared in the *New York State* case, you say, in a case which had nothing to do with race relations?

MR. VAN DEN HAAG: Nothing at all.

MR. GROSS: Thank you. I should like to refer to your testimony at pages 140-141, *supra*, and we are referring to the record of 22 June, Mr. President, in which you said "I reject the idea of racial inferiority or superiority, though I am willing to accept the idea of racial differences". Before I ask several questions *à propos* of that testimony I should like to read into the record at this point, with the permission of the Honourable President, the following sentence from the Counter-Memorial—that is, of course, Respondent's pleadings, as you know—II, page 471, paragraph 23, as follows:

"The policy of separate development is not based on a concept of superiority or inferiority, but merely on the fact of people being different."

I will not ask you, sir, to comment on the Counter-Memorial unless you wish to, but my questions relate to your own statement, and I should like to ask you first whether the idea of "racial inferiority or superiority", in your phrase, refers to innate or biological distinctions?

MR. VAN DEN HAAG: I think it does, yes.

MR. GROSS: And does the phrase "racial differences" as you used it refer to physical distinctions only?

MR. VAN DEN HAAG: No, sir, I think it refers to physical distinctions which are correlated with psychological differences.

MR. GROSS: Then you draw a distinction on a race basis, do you, between differences of a psychological nature between races as such?

MR. VAN DEN HAAG: I think, and I think this is very generally recognized, there is a correlation between physical genetic differences and differences in endowment of a psychological sort. May I add, Mr. Gross, that I am not an expert on this particular point? I merely reflect here what I regard as the consensus of the experts on this point.

MR. GROSS: What I should like to make certain, if I may, for the clarification of your testimony and the Court's edification, is what you had in mind when you used the term "racial differences". Do I understand you to say, sir, that you have in mind physical distinctions plus (I think you used the word) endowments or psychological characteristics?

MR. VAN DEN HAAG: To be entirely clear, plus observable psychological characteristics which the experts think may be in part inherent.

MR. GROSS: With respect to your use of the term "endowment" or "psychological distinction", do you regard that as an innate distinction?

MR. VAN DEN HAAG: Some of these the experts regard as innate, and I tend to reflect their opinion on this point.

MR. GROSS: Would it be as accurate to say that the experts reflect your opinion, sir? I would like the Court to have your opinion.

MR. VAN DEN HAAG: No, it would not be, I think, because you see I have not made any investigations, nor would I be competent to make any investigations on whether some traits, be they physical or be they psychological, are genetically inherent—I am not competent to make these, but I am competent to indicate, if you wish, the reason why I convinced myself that the experts' view on this matter is likely to be correct.

MR. GROSS: And as you understand the experts' view which you are, in your phrase, "willing to accept", the racial differences to which you refer are endowment, and appearance, and psychological characteristics, and you are willing to accept them as applicable to races as such?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Do you consider that there are exceptions possible within a given race?

MR. VAN DEN HAAG: Well, I do not think it is even a matter of exceptions, Mr. Gross; there is a strong degree of overlap. To indicate what I mean, suppose you take a simple physical characteristic, such as colour of the hair, or its texture, it is likely to apply to an average of a given racial group, but within that given racial group—suppose that it is black-haired, just as an illustration—there will be some blond-haired people that are as blond as, if not blonder than, the members of a different group; so that we speak, then, here of averages—there are obviously individual cases in which there is a fairly strong overlap.

MR. GROSS: Would you be willing, Dr. van den Haag, then to qualify your phrase "the idea of racial differences" to read "the idea of average racial differences"?

MR. VAN DEN HAAG: Yes, sir, I had that in mind.

MR. GROSS: You have that in mind. Now, sir, in that context, then, would "average" refer to a mathematical or a numerical average?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: By a majority?

MR. VAN DEN HAAG: Well, a numerical average—now, you are asking me a little more than I know—certainly would involve differences among the pluralities of true races; whether it involves the majority I am not willing to say, because I do not know.

MR. GROSS: With respect to those members of the race, the less than plurality or less than majority, would you then regard that there are no racial differences between them and another race?

MR. VAN DEN HAAG: This I could not say; I would say that on certain traits they may overlap with another group, but whether they will overlap as a whole I could not say.

MR. GROSS: So that would you agree that your use of the phrase "racial differences" is not a scientific or technical phrase?

MR. VAN DEN HAAG: No, I think that scientific use involves a reference to the average. As far as I know, no scientist has specified so far the quantitative proportions.

MR. GROSS: Are the "racial differences", in your use of the term, relevant to the imposition of limitations upon the freedom of individuals merely by reason of their classification as members of a particular race?

MR. VAN DEN HAAG: I think they would certainly be relevant to make a rational classification, which would then involve the allocation, possibly, of distinctive activities and, possibly, limitations. I would be careful to use the phrase "limitation of freedom" which you use because that would involve, if I understand it correctly, that the freedom of one group is more limited than that of another group, and I would not justify that.

MR. GROSS: You would not justify that, sir?

MR. VAN DEN HAAG: Not that the freedom of one group be more limited than that of another group, but I would justify the freedom of both groups in certain respects being limited so as to establish a differentiation.

MR. GROSS: Thank you. When you referred to "rational classification",

would you regard the following as a rational classification in your meaning of the phrase: a classification of Whites as "persons who are obviously White, but excluding persons who though obviously White are generally accepted as Coloured"—would that be a rational classification, in your use of the phrase?

Mr. VAN DEN HAAG: Yes, if I understand your question. You mean to say, if I may rephrase it, whether a classification should be a social one . . .

Mr. GROSS: No, sir, I asked you whether, in your use of the phrase "rational classification", you would regard the classification which I have just cited to you as a "rational classification", in your use of the phrase.

Mr. VAN DEN HAAG: The classification you have cited is how people regard each other—is it not based on that, or did I misunderstand you?

Mr. GROSS: It is how the Government classifies people in the case of South West Africa, to be specific.

The PRESIDENT: Mr. de Villiers?

Mr. DE VILLIERS: May I put something, please, to the Court? My learned friend has on previous occasions put this classification to witness. I have no objection at all, obviously, provided he puts it correctly and fully. When he says "persons who are obviously White", that is not the classification. The classification is "persons who in appearance obviously are White"—that is stated as the first criterion, and then corrected by this exception of "but excluding persons who although in appearance are obviously White are generally accepted as Coloured persons". That is all I wanted to bring to the Court's attention.

The PRESIDENT: Mr. Gross, when you are putting the question I am sure you will do your best to keep it precisely to the classification which is revealed as that which the Government made for census purposes.

Mr. GROSS: Yes, Mr. President—I regret that I did not have the text before me—I thought that I had repeated it a sufficient number of times in this honourable Court to remember it—I obviously did not, and I shall endeavour to correct my ways.

Would you, sir, having listened to the correction made by Mr. de Villiers, then revert to my question: do you regard the classification, properly read, as a "rational classification" in the sense in which you used the term?

Mr. VAN DEN HAAG: Possibly so—I would have to know more about the basis of the classification, but I think it could be a rational one.

Mr. GROSS: In your usage of the term? Thank you. Now, does the existence of "racial differences", in your use of the phrase, warrant the enforced social, political or economic subordination of one race to another?

Mr. VAN DEN HAAG: If by subordination you mean oppression, the answer is no, in my view.

Mr. GROSS: Does it justify the imposition of the limitation of freedom in the sense of setting a ceiling on economic achievement?

Mr. VAN DEN HAAG: If the purpose there merely is distribution of income that is disadvantageous to one of the groups, I certainly would not think it is justified. If the purpose is to enforce or keep to a differentiation to avoid clashes and strife, then I think it might be justified.

Mr. GROSS: The justification in that case would be for public order, would it, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: On page 142, *supra*, in discussing groups and group formation, you made the following statement:

"... no-one has really been able to show exactly what is required [this is with respect to group formation]—a group becomes a social group if it feels and acts like one . . . [then you added] . . . there are cases where there are rather few common customs, but perhaps a common enemy, or something like that . . .".

I should like to ask you, sir, whether it begs the question of what is a social group to say that "a group becomes a social group if *it* feels and acts like one"—is not the question at issue precisely what *it* consists of?

Mr. VAN DEN HAAG: Well, if it begs the question, Mr. Gross, then we have all begged the question for quite a while—that is all sociologists.

Mr. GROSS: That I have no doubt is true, sir, yes. Would you answer my question?

Mr. VAN DEN HAAG: Yes; I do not think it does. I think when we refer to a group in the sociological sense we refer to a consciousness of kind, or of group membership, that expresses itself in observable external manifestations.

Now when I referred to the group I referred to these external manifestations and I was trying to establish why they occur in a manner characteristic for the group, the special feelings of solidarity that, say, Americans have in common as distinguished from Frenchmen who have them in common with other Frenchmen rather than with Americans. Let me say once more I have found no reason for that but the feeling itself, which I simply have to take as an ultimate datum, and then I speculated on what may lead to the feeling and I found that there are a variety of things that seem to be helpful but none that seem to be totally indispensable.

Mr. GROSS: When you then refer to the word "group" in this sense, do you also include national groups? Are the people of the United States a "group" in this sense?

Mr. VAN DEN HAAG: Yes, sir. They are what is called a secondary group in sociology.

Mr. GROSS: And if there are people within the group who do not feel like the other members of the group, are they still members of the group?

Mr. VAN DEN HAAG: Yes, but they form a sub-group—a sub-culture being a member of the major culture.

Mr. GROSS: Is that always on a group basis or can it be also applied to with respect to an individual attitude or feeling? Do you understand my question?

Mr. VAN DEN HAAG: Not fully.

Mr. GROSS: A group is composed of individuals, is it?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: And feelings—are they emotions of individuals or groups?

Mr. VAN DEN HAAG: Yes, sir. They are certainly emotions of individuals; we speak of a group when the emotions of individuals seem to lead to similar manifestations which seem to be identical or similar among individuals in respect of particular objects.

Mr. GROSS: So that when I referred to the feelings of an individual and asked if an individual feels he is not a member of a group, whether that means that he is not a member of that group—is that a correct statement?

Mr. VAN DEN HAAG: No, sir, I do not think so. What it probably means is that he is alienated from the group of which he is a member and as I tried to indicate in direct examination, this is usually partly an effect of neurotic disorder. Let me, if I may, illustrate this. Take a group based biologically, but elaborated culturally, such as man and woman. I have not the slightest doubt that there are some men who identify not with other men but with women; and there are some women who identify not with other women but with men. Nonetheless, I think, if we are asked to classify groups, I would classify the men with men regardless of their individual feeling though I would admit that they constitute perhaps a sub-group of men; and similarly among women; that is, I would say that biological identity and their original psychological characteristics classify them with a group with which they are classified from the outside, even though they might individually protest. This individual protest, this alienation from their own group I would regard as a sign of pathology.

Mr. GROSS: You testified I believe that in a sense of the term "group" which you use, that the citizens of the United States form a group.

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: If an individual citizen of the United States decides to move shall we say to England and reside there permanently, is that a sign or symptom of alienation or neuroticism?

Mr. VAN DEN HAAG: Not at all. The residence is not I think in this case terribly relevant. However, if he moved to England and disavowed his American citizenship and origin, and denied it, so to speak tried to pass as an Englishman, then I would be somewhat more suspicious. But may I also add in this particular case you have chosen an example of two groups that are very similar having rather common traditions, language and so on, so that the passing from one to the other by an individual may be due to motives that are not pathological, provided that it is, so to speak, an avowed and open passing, such as, say, the poet T. S. Eliot made, who as you certainly know was born an American and became an English citizen largely because, I think, not only did he reside in England but he felt that his roots were there. I think in this case there was nothing pathological about it.

Mr. GROSS: You yourself came to the United States at what age, sir?

Mr. VAN DEN HAAG: I think I was 22.

Mr. GROSS: You became an American citizen?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Did you abandon or forsake your original group?

Mr. VAN DEN HAAG: Well I certainly never denied it. I did not feel that there was a conflict between the two groups. But, since I decided to make my life in America I decided to become an American citizen.

Mr. GROSS: But you do not feel you are passing as an American in your sense?

Mr. VAN DEN HAAG: Well, to tell the truth, sir, the longer I stay in America the more European I have been feeling in some ways.

Mr. GROSS: By European do you mean Dutch or . . .?

Mr. VAN DEN HAAG: Specifically yes. Dutch/Italian—I was brought up in Italy.

Mr. GROSS: Would you regard that . . . I will not pursue this matter further . . . it is difficult to retreat from the pleasure . . .

The PRESIDENT: You had better stop where you are.

Mr. GROSS: Yes, sir. At page 142, *supra*, you testified as follows that

the word "ethnic" means both culture and biological origin, or at least a perception of biological similarities and dis-similarities including such things such as various physical characteristics, and you were asked the question by the learned counsel "Perhaps we could get it clear . . . what distinction would you draw . . . between an ethnic group and racial distinctions", and so forth, your answer was "ethnic group is a sub-group of a race", for example—"the Jews as an ethnic group being part of the Caucasian race". Then you said—"these terms are used in a variety of ways by a variety of people". Focusing down to one person and that is yourself who is using the terms, how do you define the term "Caucasian" in that context?

Mr. VAN DEN HAAG: Well, I think I meant generally speaking the major group called "white" usually.

Mr. GROSS: You would use the word "Caucasian" as a synonym for "white"?

Mr. VAN DEN HAAG: Yes, I did in this context.

Mr. GROSS: In this context of course. Now are there, as far as you know, Jews in North Africa or Yemen or elsewhere who are not white?

Mr. VAN DEN HAAG: I do know that for instance in Abyssinia there is a tribe, the Falashah, who are Jewish, at least hold a form of biblical Judaism; and there are Negroes who are Jewish in Harlem (a part of New York). It is a small sect of Negro Jews; some of them have recently become Jews. I would make a distinction here between religious and ethnic groups, that is, an ethnic group may have a variety of religions. On the whole, in the case of the Jews, the religion has been quite correlated to the ethnic group, but there are exceptions.

Mr. GROSS: You would qualify the statement?

Mr. VAN DEN HAAG: Of course.

Mr. GROSS: I will now turn to certain questions, if I may, Mr. President, with regard to certain national situations and I refer first to page 143, *supra*, in which you referred to the partition of India, the Indian sub-continent, and also the removal of ethnic Germans from Poland and Czechoslovakia at the end of the war. The question was asked to you whether the instances you cited seemed to be merely as having a negative effect of separation, of discrimination, or what-have-you, or whether it was also to be perceived of as having a positive value and your answer was—"perhaps partition was the best way of preserving in the long run the peace among them"—by which I take it you mean between India and Pakistan and the populations thereof?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Was this, sir, this answer of yours, what you would regard as a value judgment?

Mr. VAN DEN HAAG: No, sir. This is an empirical prediction. It may be wrong but it is not influenced by my personal preferences for partition or against it. If you take, and the question I think referred to it, order as a value—and this is simply the value judgment of the questioner, then the question arises how is it best preserved? My answer was that in some cases I think separation may preserve order better than non-separation.

Mr. GROSS: We are talking now about this particular case to which you testified in the sense of actually saying that "perhaps partition was the best way of preserving in the long run the peace among them".

Mr. VAN DEN HAAG: Partition would be the means and peace would be the end—peace is the value judgment.

Mr. GROSS: But "the best way" is not a value judgment?

Mr. VAN DEN HAAG: No, "the best way" is not by war—using the word "best" in an instrumental sense—that is, it is simply a more efficient or effective means to achieve an end which is of value.

Mr. GROSS: And you say that that is based on experiential prediction?

Mr. VAN DEN HAAG: This is my prediction and judgment of the situation—obviously also that of the Indians and Pakistanis; but it would be very hard to prove this either right or wrong ultimately since this is the way history went, we cannot say what would have been the result if it had been otherwise.

Mr. GROSS: You say that this is the attitude of the Indians and the Pakistanis?

Mr. VAN DEN HAAG: They separated and I guess they wanted to.

Mr. GROSS: Are you guessing now, sir? Are we talking now about your experiential prediction with regard to the preservation of peace in this area—you have made a statement here which relates to a given situation—you are testifying as an expert and forgive me if I seem to be pressing this point to argument but I would like to know whether your reference to the Indians and the Pakistanis as feeling the same way you do reflects your experience or is it based upon evidence which is in your possession?

Mr. VAN DEN HAAG: No, sir, I have no special evidence. It is my interpretation of the fact that partition took place.

Mr. GROSS: Are you saying to the Court—do you wish the Court to believe—that this is the "best" way of doing it because it happened?

Mr. VAN DEN HAAG: No, sir, I did not imply that this is the best way possible—alternative ways might have been better. This is the way that has been taken and I was asked "might it have advantages" and my response was that it might have the advantage of preserving the peace, possibly better than other ways but now that you ask me I would be unable to say that it is the best of all possible ways.

Mr. GROSS: In other words, you would qualify the answer you gave to this in this way, I take it, and let it stand at that.

Mr. VAN DEN HAAG: Let me put it this way, if people were different from the way they are, there would perhaps have been found a better way. People being what they are they chose this way and I think, apart from passion, those who were at least more cool-headed among them probably assumed that this would be a costly way but also the best of the available ways to reduce strife and conflict. My suspicion is that they might have been correct but I would not say that I can prove that any more than anyone else.

Mr. GROSS: Now on page 144, *supra*, you referred to Ruanda-Urundi, which you described as formerly a Belgian colony. Are you aware, sir, of the status of Ruanda-Urundi?

Mr. VAN DEN HAAG: It is true that they are two independent countries.

Mr. GROSS: No; prior to their independence.

Mr. VAN DEN HAAG: I thought that they were a Belgian colony, I might have . . .

Mr. GROSS: For the record, you would not dispute the fact that they were actually under United Nations trusteeship?

Mr. VAN DEN HAAG: I did not make this distinction, Mr. Gross.

Mr. GROSS: Now there you said, at page 144, referring to separation that: "though economically quite unviable, in my opinion, [it] nonetheless

was indicated for reasons of group conflict." Now was that a value judgment, sir?

Mr. VAN DEN HAAG: Perhaps I should make clear that this was an opinion—a value judgment is an opinion but not all opinions are value judgments. This is an opinion that I have of the facts in this matter. It may be a false opinion, but it is an opinion on facts and not on values.

Mr. GROSS: Is your opinion in this respect based upon what you would regard as objective standards?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: What for example? Would you give the Court an illustration?

Mr. VAN DEN HAAG: My impression was that the separation avoided bloodshed which would have been greater had there been no separation.

Mr. GROSS: So the Court may take your testimony in this respect as your impression?

Mr. VAN DEN HAAG: Yes, sir. I have not been in Ruanda-Urundi.

Mr. GROSS: Now with regard to your testimony with respect to the United States, at pages 145-146, *supra*, particularly, you refer to the "Japanese relocation" which you described in the following terms—"the line of demarcation was an ethnic line".—I think the words you used were on page 146. Unfortunately, Mr. President, I do not . . .

The PRESIDENT: It is at the *top* of page 146.

Mr. GROSS: Thank you, Mr. President.

The PRESIDENT: The Japanese were certainly not the only group in the United States that was ethnically related to an enemy alien group.

Mr. GROSS: Thank you, sir. Now you refer to the fact that Dean Rostow of Yale had expressed the view that the United States Supreme Court decisions upholding this action were, in the words he used and which you quoted, "extraordinary", that is at page 145. And that the "decision was opposed by many people", in your phrase (p. 146). Will you indicate to the Court whether you oppose that decision in the sense in which the term is used in the testimony?

Mr. VAN DEN HAAG: I think the decision at the time was rather unwarranted and hastily taken and I would not have approved of it, had I sat in Court.

Mr. GROSS: Yes, sir. Now with regard to the United States immigration policy and quotas, to which you referred, you cited the comment at page 146, by Professor Bruton Berry, President of the State University of Ohio, in his book called *The Race and Ethnic Relations*, and you referred to his statement "the quota system based upon national origin has remained intact". First, may I ask you, Dr. van den Haag, do you regard the examples of the Japanese removal action, which you oppose, and in my view, if I may say so, sir, properly oppose, do you regard that action and the immigration restrictions to which this quotation refers, to illustrate a general policy or practice on the part of the United States Federal Government, in the area of race relations?

Mr. VAN DEN HAAG: That is a question which I find very hard to answer because what is the general policy of the United States, in this respect, is highly controversial. Now you see, the very words "the United States" leave me in doubt. Right now, for instance, the President has proposed reform of the immigration law, and if I may, I would like to quote from an article in the *New York Times*, which appeared on 19 June 1965:

"The United States Immigration Law based upon racially angled national origins quotas, makes a strange counterpoint to its progressive laws against racial discrimination at home."

So what the *Times* here is saying, in this first paragraph, is, that in the United States we have, on the one hand, policies which deny differentiation and certainly deny any form of oppressive discrimination, but we also have, on the other hand, policies which affirm this, sometimes on the state and, in the case of the Immigration Law, on the federal level. Now the Immigration Law may be changed in Congress, but, as the editorial I just quoted points out, though the President wants it changed, it is very uncertain that the Congress will change it, so when you refer to United States policy, it depends whether you have in mind the President, the Congress or the courts. Each seem to have a slightly different policy in this respect.

Mr. GROSS: I would like to come back to my question, if I may, sir, and ask you in a slightly different way than I did before, would you be prepared to express an opinion whether the two situations to which you referred, this Japanese relocation action and the Immigration Law, are exceptions to the federal policy and practice, with regard to race relations?

Mr. VAN DEN HAAG: They run counter to the developments since *Brown v. Board of Education* on the federal level, yes.

Mr. GROSS: Would you answer my question, if you wish to, more directly? Would you regard these two cases as illustrative of a general practice, or as exceptions to the general policy and practice, of the United States Government?

Mr. VAN DEN HAAG: I am sorry, but this involves a judgment I cannot make, but I would be willing to say that both policies exist and that the policy indicated in the Immigration Laws and the Japanese relocation is rarer than the other.

Mr. GROSS: Do you know of any other illustrations?

Mr. VAN DEN HAAG: Yes, on the State and local levels . . .

Mr. GROSS: No, sir, that is part of the confusion which I am engendering as a failure on my part to keep . . .

Mr. VAN DEN HAAG: You mean, on the federal level? I do not know of any other cases . . .

Mr. GROSS: The distinction between the federal level . . . so when you say it is rarer, you are not referring to any other cases?

Mr. VAN DEN HAAG: Not that I know of, no.

Mr. GROSS: So far as you know, it is unique?

Mr. VAN DEN HAAG: Since there are two cases, neither can be unique . . .

Mr. GROSS: I am talking about the Japanese relocation action.

Mr. VAN DEN HAAG: Recently—of course if you go further back and even the present policy towards Indians—it would not be unique.

Mr. GROSS: So you analogize this to the fact that the Indians are what, sir?

Mr. VAN DEN HAAG: The Indians were located . . .

Mr. GROSS: At what time are you speaking of now, sir?

Mr. VAN DEN HAAG: At various times; there is a long history, as you are certainly aware, Mr. Gross, of locating and relocating Indians forcefully to various Reservations.

Mr. GROSS: Is that the policy in practice today, sir?

Mr. VAN DEN HAAG: At the present time, they still are being located

and relocated, for instance the Senecas in New York. Just recently, they were forcefully deprived of their home ground, and relocated because some, the majority, apparently, of the people of New York, or at least, of the state government, represented in this case, by Mr. Moses, wanted to use part of their reservation for electrical dam building, and so on.

Mr. GROSS: Are you aware, sir, that their land was bought at fair prices determined by the courts?

Mr. VAN DEN HAAG: Yes, by the law of eminent domain, and quite against . . .

Mr. GROSS: And you refer to this as "forcible removal", do you?

Mr. VAN DEN HAAG: Yes, sir, it was enforced by the courts.

Mr. GROSS: Was this on the basis of the fact that they were Indians? Was this on a racial basis?

Mr. VAN DEN HAAG: Yes, sir, they owned that land on a racial basis; it had been given to them because they were members of an Indian tribe.

Mr. GROSS: Have you ever heard of the law of eminent domain being applied in New York to property owned by Whites?

Mr. VAN DEN HAAG: Yes, I have. Lots of people are so relocated and not on a racial basis, but in this case it was on a racial basis.

Mr. GROSS: In this case, it was on a racial basis, in the sense that eminent domain was exercised because they were Indians? Is that what you mean by "on a racial basis"?

Mr. VAN DEN HAAG: That I could not say, sir. I do know that it affected them as Indians, and broke, in the opinion of many legal experts, treaties that they, the Indian tribes, had made with the United States, which were overruled, as it were, by the law of eminent domain. But I do not think it was applied because they were Indians, it was applied because people wanted the land.

Mr. GROSS: That's right, I think. Thank you, sir.

The PRESIDENT: Was all the land in the Reservation required for the public purpose which you indicated?

Mr. VAN DEN HAAG: Sir, I did not quite understand.

The PRESIDENT: Was all the land in the Reservation required for the public purpose that you indicated?

Mr. VAN DEN HAAG: No, only part of it.

Mr. GROSS: On page 147, *supra*, of the verbatim of 22 June 1965—you are now referring to the United Kingdom—you said "the last Conservative Government imposed some restrictions" and then later, "as the Labour Government came to power it, contrary to its promise, did not change these restrictions", and then you said "the reason given, very largely, was that owing to cultural and ethnic differences, it would be very hard for the population to absorb a great number of these aliens" (p. 147). Now, without the least intention of engaging in and intervening in British political affairs, what was the nature of the promise made by the Labour Government?

Mr. VAN DEN HAAG: To abolish these restrictions that had been imposed by the Conservative Government, at least, in electoral speeches, that was the drift of the matter.

Mr. GROSS: That was the drift, sir? And that was for total abolition, was it, or for modification?

Mr. VAN DEN HAAG: As I understood it, it was total abolition.

Mr. GROSS: And did the promise include accomplishment at any particular time, by any particular period, so far as you are aware?

MR. VAN DEN HAAG: I have not followed British politics sufficiently to say that, but, Mr. Gross, I have before me an article in the *Sunday Times* of 13 May 1965, the headline of which is 'Labour to put New Curb on Immigrants', the body of the article clearly indicates that what are meant are Coloured immigrants, so I think I got the drift correctly. I have not read all the electoral speeches.

MR. GROSS: You were referring to a "drift" then, sir?

MR. VAN DEN HAAG: Yes.

MR. GROSS: And, now, you further testified, on page 147—you were asked in this context with regard to these restrictions, the question, "For the good of the population as a whole?" And your answer started with "Undoubtedly" and then proceeded. Now was this response a value judgment on your part?

MR. VAN DEN HAAG: It assumed certain values, Mr. Gross. It assumed that order is a value. Then it made a statement on whether this policy would be promoting order or not, and I felt it would. But of course, there was a value judgment, or at least an acceptance of a value judgment, inasmuch as I implied that the preservation of peace and order are desirable. They may require the use of some means which, in turn, may be regarded as costs.

MR. GROSS: And in this case, applying that to the situation to which you are referring here specifically, it was your opinion that this was fitted into that category?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: And that reflected the value judgments or the values upon which your judgment was based—is that correct, sir?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Now in respect of both the United States and the United Kingdom, is it within your knowledge to state whether or not, when persons within restricted categories are admitted, limitations are imposed by law upon their freedoms in the countries to which they are admitted, respectively?

MR. VAN DEN HAAG: To my knowledge, not. The purpose, I think, of the immigration restrictions both in the United States and in England now, as I understand it, is to keep people in their original location so as to avoid relocating them once they have entered either the United States or England. In other words, to make it possible within these countries, to pursue a policy of free and unhindered movement, immigration has, in part, been restricted.

MR. GROSS: And when they are admitted and become members of the national community are any ceilings placed upon their economic opportunities by reason of their origins?

MR. VAN DEN HAAG: Not *de jure*, no, not by law.

MR. GROSS: Not by law. I am talking about by law. Are any limitations placed upon their freedoms on the basis of their national origin?

MR. VAN DEN HAAG: Not that I know of, sir.

MR. GROSS: Now, I should like to turn to page 147, *supra*, of the verbatim of 22 June 1965, in which you compared language employed in the *Canada Yearbook* of 1932, to that employed in the *Yearbook* of 1963. In the former you testified that the phrase "assimilable type" had been used, and in the latter the phrase—I take to be the key phrase—"adaptability to the Canadian way of life." You stated that: "My feeling is that it means quite what was meant in 1932, although it put it a little less

bluntly." What knowledge, if any, sir, do you have with regard to Canadian immigration practices in 1963?

MR. VAN DEN HAAG: No more than I have quoted, sir.

MR. GROSS: This is all you know about the situation?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Do you have any more information or knowledge concerning the immigration policies of Canada in 1932?

MR. VAN DEN HAAG: No, sir.

MR. GROSS: Excuse me, did you finish?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Is there any evidence which supports your so-called "feeling"—a word you used—that the different language used in these two *Yearbooks* means the same thing?

MR. VAN DEN HAAG: I think that I gave some statistics at the time, which I could find again, which seemed to me to bear out the statement but at any rate my interpretation was simply based on a comparison of the two texts.

MR. GROSS: And of your personal judgment concerning it?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: In respect of your testimony with regard to Canada, the United States and the United Kingdom, may I ask you, sir, whether you would characterize your testimony in respect of each or all of these areas as "expert testimony" in your understanding of the term?

MR. VAN DEN HAAG: My testimony was based on a study of the documents which I quoted and an interpretation thereof and I would regard this as properly falling within the province of my expert . . .

MR. GROSS: Would you say, sir, that any opinions based upon a study of a document become "expert opinions" by reason of that fact?

MR. VAN DEN HAAG: Not any opinions, but reasonable opinions sometimes do, yes.

MR. GROSS: On the part of anybody?

MR. VAN DEN HAAG: No, sir, I think the study of a medical document by a medical expert—even if he only has that document before him—would classify as leading to an expert opinion. A study of the same medical document by a non-expert, a non-physician, may not be leading to an expert opinion.

MR. GROSS: So that what qualifies him to express an opinion is his range of expertise?

MR. VAN DEN HAAG: He brings to the study of the document experience with similar documents and of the facts that are being described in them. Yes, sir.

MR. GROSS: And you consider that the testimony which you have given is all directed to, is opinion based upon, your expert knowledge?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Without exception, sir?

MR. VAN DEN HAAG: Well if you mention a particular point I might be classifying as an exception but on the whole, of course, I tried to present to this Court my opinion as an expert.

MR. GROSS: And that would reflect, for example, your characterization of the meaning of the language in the two reports of the Canadian *Yearbook*?

MR. VAN DEN HAAG: Well there are two kinds of experts who generally undertake this sort of characterization, either legal experts whose spe-

ciality would have been a study of the language, or social experts who are accustomed to comparing language sometimes with history and with historical uses of it and historical customs and derive their conclusions therefrom. I would not qualify myself as a legal expert but I would qualify myself as a social expert.

Mr. GROSS: Now, addressing you as a social expert, I turn to pages 147-148, *supra*, of the verbatim record. You were asked by Counsel for Respondent - this was *à propos* of aspects of the situation in the United States - you were asked for examples of official action, other than by federal action, making racial distinctions in the United States. Then, on page 148, you referred to certain unofficial and voluntary movements in the United States, including certain characterizations of a group called "The Nation of Islam" to which you referred. Do you recall that testimony generally in that respect, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: And you referred to the facts that certain writers had expressed extremely high regard for the movement, and that its protagonists have pointed out, and you said, "... I think quite correctly, that the members of the movement are distinguished from many other Negro citizens of the United States by their better deportment, their abstinence from alcoholic beverages, and various drugs, their exemplary family life, and generally what you would speak of as an integration of personality". Do you regard this, sir, and is this what you want the Court to understand, as your characterization of the "members of the movement" in question?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: You testified on page 148 in response to a question which I will read to avoid the risk of paraphrasing erroneously, at the bottom of this page:

"Mr. DE VILLIERS: Now, before you leave those, is it not sometimes suggested that leaders of a movement like this - Moslem movement you have just referred to - are rather eccentric or fanatics?"
Then you said:

"I rather think they are myself but that I think is usually the case with the founders of either new religions or new movements of this kind."

Would you care to clarify the apparent inconsistency between the reference to the designation of the members of this group as people of "integration of personality" and "fanatics and eccentrics"?

Mr. VAN DEN HAAG: Yes, sir. The leaders of new, political and religious movements are quite often, in my opinion, people who are pathological, usually paranoid with megalomaniac and persecution delusions. To give one illustration, Mary Baker Eddy is very well known as the founder of the Christian Science movement. From the documents available to us it seems entirely clear that she had the characteristic symptoms of delusions of reference which are characteristic of paranoia. When she had some bodily pain she attributed it, for instance, to someone far away using magnetic rays on her and so on and so on. These are indications normally regarded as indications of paranoid system of delusions of reference. This did not in any way prevent Mary Baker Eddy from founding a major Christian denomination and my experience with the followers

of that denomination is that they are often exemplary people who in all psychological respects I would regard as not only well adjusted but partly better adjusted than the average. I would make a similar statement about the Jehovah's Witnesses, another ...

Mr. GROSS: ... I would appreciate, if the President permits, if you would confine yourself to one question at a time. Mr. President, I did not want to trespass on the Witness's answer but I would like to keep on this subject if I may, sir?

The PRESIDENT: By all means.

Mr. GROSS: Is the view you have just expressed with respect to the membership of this group, would you say, as a social expert, the general attitude held by Negro leadership in the United States towards the "Black Moslems", as they are called?

Mr. VAN DEN HAAG: Most of the non-Moslem leaders are opposed to the Moslem movements and consequently act as opponents of it but I am neither opposed nor in favour of it not being directly involved in Negro politics so I am giving an outside judgment on the psychological integration of the members of the movement.

Mr. GROSS: You would not be prepared to deny that, or would you be prepared to say whether or not, the announced programme of the group includes violence and threats of violence against the White community?

Mr. VAN DEN HAAG: The movement in itself has often been accused of that, it denies that its aim is violence although I would certainly be willing to say that sometimes speeches made and actions taken seem to indicate that it is in favour of it so the situation here is equivocal and I can do no more than indicate that.

Mr. GROSS: I will not pursue this line too far, Mr. President, unless the Court wishes, otherwise I would, however, like to ask one other question in regard to it. The question I have is with respect to the distinction you draw between the leaders and, as you call them, "members" of the group. The leaders of the group you do not regard as persons with what you have described as "integration of personality"?

Mr. VAN DEN HAAG: Well, this would get us into something rather technical there, their paranoia may be egosyntonic, but it still remains paranoia; that is, it may be highly integrated, it may even lead them to engage in more effective action, nonetheless, I would regard it as a pathological phenomenon.

Mr. GROSS: I would like to refer to your testimony on page 148, with respect to what you described as "major Negro movements in the United States are certainly not the ones I have mentioned". You referred to an organization which you described twice as the "National Association for the Improvement of Coloured People". Is that the same organization as the National Association for the Advancement of Coloured People?

Mr. VAN DEN HAAG: Yes, sir, I am sorry I have misquoted.

Mr. GROSS: You said that the "National Association for the Improvement of Coloured People", and others, are taking a much more moderate line, are probably more influential among Negroes as a whole, and you said that when I asked on page 149, with reference to the National Association for the Advancement of Coloured People, whether it advocates some form or other of voluntary re-location. Your answer was: "I do not think so." Do you have any doubt about that matter, sir, as to the programme or declarations of the National Association for the Advancement of Coloured People, with regard to re-location?

Mr. VAN DEN HAAG: I am convinced that they do not advocate re-location.

Mr. GROSS: So, you would amend your response to clarify the record.

Mr. VAN DEN HAAG: I think it meant the same, but . . .

The PRESIDENT: He does not agree with it, he does not think so.

Mr. GROSS: I understood the context to mean that you do not think their programme is one for re-location.

Mr. VAN DEN HAAG: I think you are correct.

Mr. GROSS: And are you certain that it is not?

Mr. VAN DEN HAAG: Reasonably certain, yes, sir.

Mr. GROSS: Now on page 149 of the transcript, you made the following statement, among others, of which I will cite just one sentence, although you may wish to consult the context—I think it is fairly cited: ". . . Negro leaders are the first to point out that desegregation has made very little practical progress". That is in the middle of page 149. Is that still your view today, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: That that is the view of Negro leaders, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: I should like, Mr. President, with your permission, sir, to emulate the witness and refer to the *New York Times* of Sunday, 27 June 1965, from which I should like to quote a few brief excerpts, and will produce for the documentation, with the President's permission.

The PRESIDENT: Mr. Gross, you are cross-examining at the present moment. If you wish to refer to the document in order to make a quotation to the witness and ask him whether he agrees or disagrees, it would be competent for you to do so, but not for the purpose of producing it.

Mr. GROSS: Thank you, sir. I wanted to make clear that the entire story was available and in the Court. The following is dated Washington D.C., 26 June, and reads as follows:

"In its first year in force the Civil Rights Act of 1964 is believed to have eliminated more racial discrimination than all the Federal Laws, Court Rulings and Executive Orders in the decade preceding it. Government officials and civil rights leaders agree that the Act has met with greater and easier compliance than anyone expected, and it has become a tremendous psychological force in softening resistance to desegregation."

Then quoting briefly further in the same story:

"The law has also brought compliance by entire communities that had held out against Court order desegregation. Leroy Collins, director of the Community Relations Service, an agency created by the law to help bring compliance, said: 'For every incident of defiance and violence you can name, I can name you hundreds where, without fanfare, Southerners White and Black, are putting aside the old ways and facing up to the necessity of resolving their common problems'."

Could I ask you, sir, whether or not you agree with the statement in this *Times* story, that in the first year of its existence the Civil Rights Act of 1964 has eliminated more racial discrimination than all the federal laws, court rulings and executive orders in the decade preceding it? Do you agree with that, sir?

Mr. VAN DEN HAAG: I certainly do not.

Mr. GROSS: Yes, sir. And do you agree that it has become a tremendous psychological force in softening resistance to desegregation?

Mr. VAN DEN HAAG: I do not agree with that either, sir.

Mr. GROSS: So that you would disagree with the concededly un-named government officials and Civil Rights leaders that are referred to?

Mr. VAN DEN HAAG: Not only that, but I would also point out that Leroy Collins has a rather interested view point. He is in charge of bringing about and making effective the law, and I think he says it is effective because he is in charge of it. He would otherwise have to say that he did a very bad job.

Mr. GROSS: So you think he is a biased witness in that respect?

Mr. VAN DEN HAAG: Very much so, sir.

Mr. GROSS: Now we turn now to a new line of questions, Mr. President, if I may, that relate to pages 149-150, in which you gave the following evidence:

". . . one has to make a distinction between segregation and discrimination . . . I would like to use the word segregation to mean separation, which, of course, need not require or be connected with oppressive measures, but can be so used in the same way a knife may be used to cut a roast or can be used for murder".

And then referring back to your view that "segregation does not have to lead to discrimination", you then defined discrimination as follows:

". . . if by discrimination we mean, as I propose we ought to, placing someone, or placing a group, at a disadvantage that is not warranted by any relevant element in the situation in which the group is found".

Do you adhere to that definition?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Now would the word "disadvantage" as used in that definition, include limitations imposed upon freedom of members of a racial group as such: such as, for example, setting a ceiling on their economic advancement?

Mr. VAN DEN HAAG: As I tried to indicate before, sir, that would depend on the situations. There are two factors that I would regard as relevant here, first the qualifications of the members of the group: if they are prevented from taking a job because they are not qualified to take it, this I would not regard as . . .

Mr. GROSS: May I repeat my question—you seem to be confused?

Mr. VAN DEN HAAG: I am trying to give the background for my answer. The second relevant consideration would be: supposing that some members of the group are qualified for a position that they are prevented from holding, despite their qualifications—I think this is what you had in mind—it may still be in the interest of the two racial groups or communities involved not to allow them to do so under certain circumstances, namely when, although this, the assumption of this job, would serve their personal and individual interests, it may bring about disorder within the community and may lead to the dissolution of tribal or cultural bonds, which is regarded as undesirable. So that, may I put it this way, any social measure, whether it be a traffic law or laws of the kind that you have indicated, though meant to be for the benefit of the great majority, and to yield a net benefit to society, may lead to some disadvantage for individuals who find themselves in special situations. This is undoubtedly so, both in my writings and teaching, I have always told my students

that I cannot think of a single social measure which would not affect some individuals in a way which, with regard to the individual situation, is inequitable, but which nevertheless can be justified in terms of the general social advantage or disadvantage.

Mr. GROSS: Sir, would it be possible to answer the question which I intended to put to you: does the term "disadvantage," as used in your definition of "discrimination," include legal limitations imposed upon freedom of members of a racial group as such, for no other reason than their membership—on no other basis—and I have given as an example the setting of a ceiling on economic advancement. Could you answer the question whether this is within the concept of your term "advancement," as used in your definition?

MR. VAN DEN HAAG: This is sometimes, but it is not always, a net disadvantage, that is it may work to their benefit in the long run and to the benefit of the average of the group, but it may also be a disadvantage for some individual members.

Mr. GROSS: Dr. van den Haag, in your testimony at page 135, *sic/ra*, of the verbatim on going back to that page, if I may—as part of your qualification of expertise, you testified that you had given special attention to minorities problems and then you used the following expression or characterization: "as to all groups other than the dominant one in any given society." Would you explain to the Court, sir, what the concept of the "dominant group" is in this context?

MR. VAN DEN HAAG: It is the group that sets the tone, influences, informs and shapes the culture that prevails in the territory.

Mr. GROSS: Does it have any economic implications?

MR. VAN DEN HAAG: Not necessarily, no.

Mr. GROSS: Does it have any economic implications in any situation? You said "not necessarily".

MR. VAN DEN HAAG: An implication I take to be a necessary attribute and that is not the case. Of course, it could.

Mr. GROSS: In other words, is it your testimony that if a group exercises economic control it is a dominant economic group?

MR. VAN DEN HAAG: Well, certainly I would call it a dominant economic group, yes.

Mr. GROSS: And that would fit in within your concept of "dominant" group as you used it?

MR. VAN DEN HAAG: It could be a part of it, yes.

Mr. GROSS: Thank you, sir. Now, I should like to read a quotation from a work by Professor Brewton Berry, whom you cited, on techniques of dominance, and the citation is from Chapter 14 in *Race and Ethnic Relations* (published in Boston in 1965), at page 327. You cited this authority, as you may recall, at page 146 of the verbatim, in another context. The passage which I should like to quote to you and then, subsequently, follow with a question or two, is as follows:

"Whenever racial and ethnic groups come into contact (and then I skip some irrelevant phraseology) the group which enjoys the greater prestige and wields the power is invariably jealous of its status, will not surrender its prerogatives without a struggle and is determined to defend its own values and its culture against competing and conflicting systems."

That is from page 327.

Mr. van den Haag, I should like to ask you—in terms of your simile of separation or segregation as a knife which could do harm or good—do you agree that segregation, or separation (whichever you prefer) readily becomes discrimination if a dominant group wields the knife—dominant in the sense that you used the term?

MR. VAN DEN HAAG: That depends entirely on the intention of the dominant group. If you are asking me to tell you what I think this intention usually is, I can only tell you it depends on the particular circumstances. I would not agree with Professor Berry's idea that this is invariably so and I wish to call to your attention that I have used Professor Berry's book . . .

Mr. GROSS: In a different context?

MR. VAN DEN HAAG: Not only that, but only to quote passages which he himself quoted from other authorities.

Mr. GROSS: You disagree with the opinion or judgment which I have quoted from Professor Berry?

MR. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Now, if, however, it may be that in certain situations (and I take that from your answer) this would be valid in certain situations—is that not correct, sir?

MR. VAN DEN HAAG: Yes, sir.

Mr. GROSS: In "certain situations"—which I believe is the phrase you used, or words to that effect—if one group exercises economic control or "economic domination" in the sense we have established between us, what safeguards, if any, would be necessary and feasible to assure that such dominant group exercises its control in a disinterested manner for the general public welfare?

MR. VAN DEN HAAG: Well, I think it is in the interest of the dominant group itself to do so.

Mr. GROSS: "To do so", meaning what, sir?

MR. VAN DEN HAAG: To exercise its power in the interests of all, for if it did conceive of its own interests quite narrowly and impose great disadvantages on those who are not dominant, I think in the long run it would be to its own disadvantage. I do not know of any external controls that could be so used and I would like to point out, Mr. Gross, that it is contended, at least in the United States, that in the South, where they have been segregated, Negroes have been exploited and I do not deny that that has been the case, I merely deny that it must be the case. It is also contended in the United States that in the North, where Negroes have not been segregated, the Negroes have been equally exploited and in fact people say more so. So that the presence or absence of segregation is, in my opinion, not significant in trying to determine whether there is exploitation.

Mr. GROSS: You understood, sir, did you, that my question was, I repeat: what safeguards are necessary and feasible to assure that the dominant group exercises its control in a disinterested manner? Did I understand you to say that enlightened self-interest is the safeguard?

MR. VAN DEN HAAG: I cannot think of any legal safeguards that would be very helpful. In this connection, may I point out that the Constitution of the United States has not been changed since the Fourteenth Amendment was passed, but that it is now interpreted in a way that would eliminate segregation, whereas previously it was not so interpreted. This may illustrate my contention that any law that you would

pass would not automatically be a safeguard—it all depends on how it is being used. The same Fourteenth Amendment, in other words, was used 50 years ago in one way and is now used another way.

Mr. GROSS: That is so. Would you wish the Court to understand that you do not assign safeguarding values to the Constitution of the United States?

Mr. VAN DEN HAAG: Not in the respect that you refer to.

Mr. GROSS: Thank you, sir. Now, your definition of discrimination refers to disadvantage not warranted by any relevant element in the situation—I quote the words “disadvantage”, “warranted” and “element” in that definition. I am referring to the verbatim record of 23 June, page 150, *supra*, Mr. President. Do the words “warranted” and “relevant” in this context involve value judgments?

Mr. VAN DEN HAAG: I think the word “warranted” is a value judgment which assumes the value of “relevant”; but the relevance itself is a factual matter.

Mr. GROSS: I am not sure I understood you, sir. You said that the word “warranted” assumes a value judgment?

Mr. VAN DEN HAAG: Yes, sir. It assumes that relevance is of value; and so “warranted” is a value judgment about the necessity of the distinction being “relevant” to the situation.

Mr. GROSS: So what is “warranted” in a particular context or situation depends upon the eyes of the beholder? Is it on the judgment of the person who is making the decision as to what is warranted and what is not?

Mr. VAN DEN HAAG: Well, I do not think that value judgments are quite so arbitrary.

Mr. GROSS: They can't be good or bad, sir, would you agree?

Mr. VAN DEN HAAG: Certainly they are hard to prove.

Mr. GROSS: I am not trying to qualify a particular value judgment—I am asking you as a social expert, as I think you have described yourself, sir—whether in this context of your own definition of the word, the word “warranted” is interpreted in a particular context on any basis other than a subjective evaluation of the person making the judgment? May I put my question in that way, sir?

Mr. VAN DEN HAAG: Yes, sir, I think I grasped your question, but perhaps I was not as clear in my answer as I should have been.

You see, as I said when I proposed this originally, I think in each situation specific criteria are relevant. In a scholastic situation, for instance, scholastic performance is relevant and not, say, religion or sex. In a religious situation religious belief is relevant and if, say, you are selecting girls for a chorus line, aesthetic and erotic appeal may be relevant. So, when I speak of “warranted” I mean simply the value judgment that relevance is of importance to the situation and that judgment could be, if you wish, regarded as a value judgment.

Mr. GROSS: Do you regard this type of value judgment, with respect to what is warranted and what is not warranted in a particular context, to be an attribute or specialty of the science of sociology?

Mr. VAN DEN HAAG: No, sir.

Mr. GROSS: May I ask you, sir: is the word “discrimination” a word or concept which is commonly used by sociologists in what may fairly be called a pejorative sense?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Does the word “discrimination” have a connotation of hostile or adversary relationship between groups in a society?

Mr. VAN DEN HAAG: As it is now used in a political context we usually speak of “discrimination against” which is synonymous with “placing at a disadvantage for irrelevant purposes”.

Mr. GROSS: Is there an element of hostility or adverse relationship implicit in such a situation of discrimination?

Mr. VAN DEN HAAG: Not necessarily, no.

Mr. GROSS: One can discriminate against another, in this sense of the word, with benevolent motives?

Mr. VAN DEN HAAG: Well, that doesn't follow. You asked whether there was hostility. Now, it may simply involve a preference for those for whom the discrimination is in favour.

Mr. GROSS: A preference by those who do the discriminating, you mean?

Mr. VAN DEN HAAG: Yes.

Mr. GROSS: Would that be reasonably regarded by the victims of the discrimination as a hostile or adverse preference?

Mr. VAN DEN HAAG: Perhaps we disagree on the use of the word hostile. They may not feel that they are being discriminated against because they are hated, they may simply feel that the discriminator prefers another person or group. In other words, if I grade my students unfairly, making an unwarranted discrimination, preferring, say, all the prettier girls and giving them “A's” and giving bad grades to all the less attractive girls, I do not think that the less attractive girls will necessarily feel that I am hostile to them, they will merely feel that I am friendly to the more attractive ones.

Mr. GROSS: Would that, sir, as a psychologist, make them feel very much better?

Mr. VAN DEN HAAG: It makes them feel that I am weak, and my weakness leads me to be unfair, but not that they are being persecuted.

Mr. GROSS: So that perhaps you would prefer the word “unfair” to “hostile”?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Would it be compatible with the objective of promoting well-being and social progress in any society if a government by official action fosters such an unfair or, if I may say, adversary, relationship between groups?

Mr. VAN DEN HAAG: I should certainly think that any government that deliberately places a group at a disadvantage does something, and this is a value judgment, that I would regard as unjust.

Mr. GROSS: If a law is passed, would that be a deliberate action of the government, normally speaking?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Or if regulations are issued, are they normally deliberately issued?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Now I would like to quote from the testimony of Professor Bruwer, a professor and social anthropologist of renown who was a member of the Odendaal Commission, and who testified on 6 July (in the verbatim record at p. 310, *supra*)—and I quote from my cross-examination of him—I asked: “The decisions (parenthetically, Dr. van den Haag, this refers to the imposition of limits on freedom upon persons by reason of their race—this was understood between the witness and myself, I

believe it is fair to state) are made by administration, which then is controlled by one group. That is correct?" Answer: "That is correct, Mr. President." And I asked: "And it is controlled by the group whose happiness is, in your terms, determined to a large extent by the limitations imposed on the freedoms of the other group. Is that correct?" Answer: "That is correct." Did you understand this exchange?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: In your opinion, as a sociologist, would you describe such a situation as the one which I have read to you in this colloquy as one in which discrimination may be said to exist?

THE PRESIDENT: Mr. Gross, is the quotation you are making from Professor Bruwer in relation to the southern sector only, or in respect to South West Africa in general?

MR. GROSS: For the purpose of my question, Mr. President, I would say it applies generally to South West Africa.

THE PRESIDENT: What is the page of the reference?

MR. GROSS: Page 310, *supra*, of the verbatim record, I would say also, Mr. President, that it applies as well to the southern sector. May I continue, sir, or would you want further elucidations? Thank you.

Would you, sir, respond to my question, or would you like me to repeat it?

MR. VAN DEN HAAG: I should say, as I tried to say before, if there is a limitation imposed, be it economic, be it on freedom, and so on, and that limitation is imposed unilaterally on one group without being imposed in a manner that is more or less symmetrical on the other group, I would regard this as discrimination. However, if the limitation is imposed on one group, supposing for instance that you were to say members of a certain tribe or group cannot become lawyers in a certain city, but they can become lawyers in a different city or in a different group, where as members of another group cannot become lawyers there, then I would not regard it as discrimination; that is, discrimination involves a unilateral imposition of a disadvantage not compensated for by any advantage to be achieved elsewhere.

MR. GROSS: Would you elucidate for the possible interest of the Court what you mean by "here" and "there" in that context. I am talking about one place, and I was addressing my question to that.

MR. VAN DEN HAAG: I am not, as you know, familiar with Africa, but if I may give an illustration in the United States—if you were to say to a lawyer born in Cleveland, Ohio, that he cannot become a lawyer in New York but only in Cleveland and some other places, perhaps, and at the same time to say to lawyers born in New York that they cannot become lawyers in Cleveland, and so on, then I would not regard it as discrimination; but if, on the other hand, you were to say to the Cleveland lawyer "You cannot become a lawyer in New York", and say to the New York lawyer "You can be a lawyer both in New York and Cleveland", then I would regard it as discrimination, assuming that the qualifications are equal in both cases.

MR. GROSS: So that the key to your answer, if I understand you correctly, sir, is a proper definition of the area within which the asserted discrimination takes place?

MR. VAN DEN HAAG: No, sir. I perhaps was not as clear as I wished; the key to my answer is that bilaterality, that is that the limitations be imposed equally on both groups.

MR. GROSS: Now may I come back, sir, to my question, in terms of my question to Mr. Bruwer and his answer—this is still at page 310, *supra*:

"And it is controlled by the group whose happiness is, in your terms, determined to a large extent by the limitations imposed on the freedoms of the other group. Is that correct?"

His answer: "That is correct." Now I ask you, sir, in your opinion as a sociologist, would you describe such a situation as one in which discrimination may be said to exist?

MR. VAN DEN HAAG: Sir, let me try again; you are now referring to happiness, a term that I prefer not to use because it is rather hard to . . .

MR. GROSS: Do you know it, sir, in the Constitution of the United States, the Declaration of Independence?

MR. VAN DEN HAAG: Yes, sir, I am rather familiar with them, but I still think it is a very hard term to define and to measure; but at any rate, I would say if you were to say that the happiness of one group is determined or depends on the limitations of another, if this is wholly unilateral—that is, if you could not say that the happiness of the other group depends on the limitations of the first—then you may speak of discrimination; if it is bilateral you may not.

MR. GROSS: Yes, sir. And are you familiar with any diversified or integrated economic society within which this principle operates—an exchange of deprivation of freedoms within the same economy by official action?

MR. VAN DEN HAAG: I understand that that is the case in South Africa, but you ask me whether I am familiar with it—certainly not.

MR. GROSS: Are you familiar with it anywhere, sir?

MR. VAN DEN HAAG: Not out of first-hand experience.

MR. GROSS: You never heard of such a situation?

MR. VAN DEN HAAG: I have heard of it—I am trying to convey that—but I am not familiar with it.

MR. GROSS: Have you heard of such a situation existing anywhere else than what you heard about South Africa and South West Africa?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Would you name one or two illustrations?

MR. VAN DEN HAAG: History has quite a number.

MR. GROSS: The current, contemporary world, sir?

MR. VAN DEN HAAG: No, I cannot off-hand tell you.

MR. GROSS: Now may I read from your work *The Fabric of Society*, the well-known text, properly esteemed, published in 1957 and, I believe, co-authored, if I am not mistaken, with Ralph Ross. At page 161 of the work to which you referred in your testimony—that is, you referred to the work—I do not think you referred to this quotation, but I read, if I may, sir:

"Prejudices are the ideological links in the historical chain that keeps the disdained group bound to its low status. When the low status of the slighted group is used to inflict material disadvantages on its members, they are 'discriminated against'. Their common characteristic, such as skin colour or nationality, is regarded as sufficient *per se* to deny them the parity of advantages or opportunities they seek, though it be without relevance, or the common characteristic is taken to indicate incapacities, for instance stupidity,

which, were they present, would be truly disqualifying. This last implies that the irrelevant common characteristic of the group ought not to serve as a basis for discrimination against it, unless indicative of relevant incapacitating traits, which stands to reason."

Do you still consider at the present time these to be correct views, as they were in 1957?

MR. VAN DEN HAAG: These are, I think, correct views, and they are consistent with what I have tried to testify to here.

MR. GROSS: That, of course, the Court will have to decide.

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Now these references specifically to "material disadvantages" would relate, would they, sir, to economic disadvantages?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Would they relate to the imposition of ceilings upon economic advancement based solely on race, without regard to individual qualities?

MR. VAN DEN HAAG: Provided that these ceilings are imposed only on one group in a specific situation, and not on the other.

MR. GROSS: Yes, sir, that is what I am referring to. The specific situation, however, to which I invite your attention is one, let us say hypothetically, in which you have a large number of different races, classified as such, working and, to a large extent, living in the same economic and geographical area--would this correspond to the context or situation that you have in mind in answering my question?

MR. VAN DEN HAAG: I have not understood this fully, sir.

MR. GROSS: I see, sir. I think I can state it in a sentence: in a situation in which, let us say, two different races live and work together in the same economic environment, would that be a context or situation to which your response referred? You used the phrase "in a situation" would that be a situation as you used the term?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: Thank you. I would like to refer to page 150, *süd-a.* in which you testified as follows:

"... in our memory very clearly I suppose is that [this is one case you cited] of the Jews in Germany, who were certainly slaughtered (discrimination is not enough) [I take it that you probably meant 'was not enough', but it appears in the verbatim record as 'is not enough']; yet there was no segregation of any length preceding this slaughter . . .".

This was *à propos* of your views expressed in the testimony regarding segregation and its implications. Can you tell the Court, sir, *à propos* of the question of length of time "preceding the slaughter", as you referred to it, when was the requirement introduced in Germany that all persons classified as Jews must wear a Star of David badge in public?

MR. VAN DEN HAAG: I do not know the exact time sequence, but my opinion was, and is, that to the extent to which segregation was introduced in Germany, it was introduced as an effect of the planned slaughter or discrimination and not as a cause; and the point I wished to make, and perhaps did not succeed in making as clearly as I wanted, is that segregation is not necessary as an instrument for discrimination, though it can be so used, and that discrimination and even slaughter can be planned without prior segregation; but of course then in the act of

slaughter, or in the time most proximate to it, you will necessarily have to impose some segregation to undertake it.

MR. GROSS: Could you explain to the Court, sir, why, as a sociologist, or any other field of expertise you cared to identify yourself with, segregation was a relevant prelude or preliminary to slaughter?

MR. VAN DEN HAAG: Yes, sir, because if you wanted to select Jews for slaughter, you had to select them; the act of segregation was simply part of the act of selection. They had to be distinguished from non-Jewish Germans so as to be selected and sent into concentration camps, which were filled with them; so here the separation was simply incident to the slaughter, as it was incidentally also in countries such as Poland and Holland and many others, where the Germans did not even have time to introduce a preliminary period of segregation of any length, but directly selected them out; but of course this selection, transportation and so on involved segregation as a prelude to death.

MR. GROSS: We are not referring to that, sir. Are you familiar with any limitations that were imposed upon the freedom of Jews prior to their slaughter?

MR. VAN DEN HAAG: Again as an instrument to keep them, so to speak, ready for the slaughter that was done, yes--all kinds of limitations.

MR. GROSS: And when the sign appeared on a park bench saying no Jews were allowed--this was an incident to preparing them for slaughter?

MR. VAN DEN HAAG: No, sir, this was just an expression of general spite and hatefulness, I would think.

MR. GROSS: So that this is an element of segregation, or separation, if you use the terms synonymously?

MR. VAN DEN HAAG: I do not think that even at that time in Germany there was anything that I would seriously call segregation. It was done to some extent in certain other countries in which it was geographically more easy--for instance, in Warsaw, where the Jews were confined to a ghetto--but it was really not done in most of Germany at least before the start; they were simply selected and sent to concentration camps, which is an act of segregation. Now there were a number of special rules that applied to them, to Jews, before, such as making them wear distinctive garb or signs--things like that--but all these seemed to me to be part of a deliberate plan on the part of the Government to make them objects of hate.

MR. GROSS: And that, therefore, was an element of the plan which was perhaps relevant to slaughter, perhaps not, depending on the intention of an administrator--is that what you would say, sir?

MR. VAN DEN HAAG: Yes, sir.

MR. GROSS: The limitations of freedom upon them by reason of their race, you are telling the Court, was merely a part of the plan for their slaughter. Now were there other limitations of freedom imposed by Nazi Germany upon other than Jews, for example, those who expressed political opinions addressed to the regime?

MR. VAN DEN HAAG: Well yes, under somewhat different laws. In the case of the Jews these were imposed merely because these people were Jews; in the case of political and so on it was introduced by more normal individual legal proceedings--I think in many cases at least--for the administration of justice in Nazi Germany certainly is a doubtful proposition to begin with but there were also other races, as I think you suggest,

who were being oppressed and slaughtered by the Nazis—the Jews were not alone—the gypsies and others were involved but of course the main harshness and cruelty of the Nazis did fall on the Jews.

Mr. GROSS: Would you say, sir, that the Jews under Hitler were discriminated against?

Mr. VAN DEN HAAG: Certainly.

Mr. GROSS: Now with reference to page 151, *supra*, where you were asked for a general comment on possibilities of comparing, and I quote from the question—"the American Negroes" with "indigenous inhabitants of Africa", and you answered—"the American Negroes originally came from Africa but I think there are very major differences. One is a purely biological one" and then I skip . . . "It is generally said that African Negroes, on the whole, are purer Negroes whereas it is generally accepted that there is about a 30 per cent. admixture of non-Negro genes, or blood, in the American Negro". Do you recall that testimony?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Do you wish to qualify it in any way before I ask you questions about it?

Mr. VAN DEN HAAG: No, sir.

Mr. GROSS: I have not seen the revised verbatim. In this response to the question of comparing the "American Negroes" with the "indigenous inhabitants of Africa", did you intend to refer to *all* American Negroes? Would you answer that "yes" or "no"?

Mr. VAN DEN HAAG: Well it is a little difficult for the reason that I . . .

Mr. GROSS: But you used the phrase . . . I just was trying to get for the Court the benefit of the use of the phrase. Did that phrase refer to all American Negroes?

Mr. VAN DEN HAAG: Let me explain, sir, that these are statistical matters. When I speak of a 30 per cent. admixture, for instance, I do not mean that I can state or that I do believe, that every American Negro has a 30 per cent. admixture of genes—what I do mean is that I am informed by geneticists, of which I am not one, that on the average one may speak of such an admixture. I do not think that there are any scientific statements that are made in modern science that are other than statistical in this sense.

Mr. GROSS: So that your answer is with respect to a statistical base in which you are dealing with averages rather than concepts of a race, is that correct?

Mr. VAN DEN HAAG: The concept of a race is a concept of an average, sir. The members of a race are not all identical in any particular respect; on the average certain types in a race are more frequent than they are in another race and that gives us a distinction. It is a frequency statement, never a statement referring to all members.

Mr. GROSS: I see. So that phrase "such as the American Negroes" means the average American Negroes?

Mr. VAN DEN HAAG: Right.

Mr. GROSS: Would you undertake to define to the Court a description of an average American Negro?

Mr. VAN DEN HAAG: I would not, sir. I am not competent to do so.

Mr. GROSS: But it is a concept which you have in mind in using the phrase?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: But you could not explain to the Court what it is.

Mr. VAN DEN HAAG: I accept this as we always do in science from a related science, namely in this case, the biologists. Now you see to give a biologically correct description of American Negroes, I would have to have greater competence in biology than I have or than I need to be a sociologist. As a sociologist I am only interested in the social perception of the Negroes not in their biological substance.

Mr. GROSS: Your reference to the purely biological difference, then, in your response to Mr. de Villiers' question, was irrelevant to your . . .

Mr. VAN DEN HAAG: It is fairly irrelevant and if you wish I will withdraw it.

Mr. GROSS: Not at all; that is entirely up to you. Now do you regard, on the basis of your discussions with geneticists or scientists in fields other than your own, that there is a distinction between genes and blood—you use both?

Mr. VAN DEN HAAG: I used them synonymously. I think blood is a colloquial expression for genetic differences.

Mr. GROSS: So that you did not mean blood literally?

Mr. VAN DEN HAAG: No, sir. There are, incidentally, I happen to know, differences in the blood composition, but I could not tell you exactly what they are—I understand there is a difference in the time of coagulation.

Mr. GROSS: You mean between the average Negro and the average White?

Mr. VAN DEN HAAG: Yes, surgeons tell me that they have to pay attention to that.

Mr. GROSS: And are there differences within each race as well? Have you consulted surgeons on that question?

Mr. VAN DEN HAAG: Certainly, there are differences regarding . . .

The PRESIDENT: I do not know what relevance the last two questions have, Mr. Gross.

Mr. GROSS: Sir, the relevance, with all respect, is to the witness's expert testimony, if it is expert testimony, about a 30 per cent. admixture of non-Negro genes or blood in the American Negro, and I am trying to, with all respect, get from the witness clarification as to words and phrases he uses here which are so wide as his expertise, as I understand it.

The PRESIDENT: Very well.

Mr. GROSS: Now would you say, sir, as a sociologist that the term "American Negro" in this context is a stereotype?

Mr. VAN DEN HAAG: I would not say so, sir. It can be so used but you can certainly speak of the American Negro, you can speak of the German type or the Italian type and so on. It may be used as a stereotype if it is used to mean every single German or every single Negro is such and such—that would be a stereotype but if it refers to a frequency distribution of types, be they physical or psychological, it is a perfectly legitimate and scientific description.

Mr. GROSS: Now is there a scientific description that covers the category of an off-spring of a mixed Negro-White marriage?

Mr. VAN DEN HAAG: In certain countries there usually . . .

Mr. GROSS: As a scientific matter, sir.

Mr. VAN DEN HAAG: As among geneticists, is that what you mean?

Mr. GROSS: In any capacity which you represent as an expert . . .

Mr. VAN DEN HAAG: Well, I am not a geneticist so I would not be able to respond to your question if it was meant to be genetical, but if

it is meant to be social, we do not make such a distinction except to say that some Negroes are more white, more light or something like that and others are less so.

Mr. GROSS: Purely visual, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: So that as far as you know there are no scientific or genetic criteria which are applicable to the mixed off-spring of a mixed marriage?

Mr. VAN DEN HAAG: I cannot commit myself on that, as I said, I do not know enough about it.

Mr. GROSS: I see. At page 151, *supra*, of your testimony, you said—

"... the American Negro does have American culture, an American Negro sub-culture if you wish—a sub-culture just as that of say long-shoremen may be called a sub-culture owing to specific circumstances of their life".

Does the American Negro here in this context refer to the average, as you have used the term, the "average American Negro"?

Mr. VAN DEN HAAG: Yes, sir. Now I am fully aware, if I may expand a little on this, that of course there are lower-class, middle-class and upper-class Negroes and that they partake in part of Negro culture and part of middle class, or upper class as the case may be, culture that if they are longshoremen they partake in part of the sub-culture of longshoremen and part of that of Negroes. But this is very common and would apply to everybody—that is we are all usually members of more than one sub-culture.

Mr. GROSS: You use the terms "American Negro sub-culture": were you referring to a statistical base in that . . . ?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: That you were referring to "sub-culture" as a common feeling among the average American Negro—I am not trying to put words into your mouth, I am trying to elucidate your meaning.

Mr. VAN DEN HAAG: I think this would be correct and I would for instance make this clear if you refer to linguistic habits which are certainly part of a sub-culture, you would find that certain expressions, modulations of phrase, terms and so on are more often used by Negroes say than by non-Negroes. Of course, there is individual variation in this, nonetheless you can characterize a group in these terms.

Mr. GROSS: So that by education and environment you change the sub-culture pattern in your terms?

Mr. VAN DEN HAAG: To some extent, yes.

Mr. GROSS: To some extent—to what extent is it? Is it perpetual and frozen?

Mr. VAN DEN HAAG: I think it is fairly ultimately ineradicable, that is education has the effect of making people acquainted with other sub-cultures and acquainted with the culture at large but it does not usually extinguish the feeling of belonging or deriving from a sub-culture.

Mr. GROSS: I would like to invite your attention now to another area of inquiry. At page 132, *supra*, you say that—"in principle, wherever there is a Native culture that has any sort of strength . . . I would make every effort I could to maintain it" and if it was necessary "to bring about a change, I certainly would want to do it in the slowest and the most supervised way". And then on page 153 you say—"there are cases when the change occurs suddenly and without regulation by superior

authority". I should like to ask you, sir, whether this change to which you refer relates to rapid or other social change?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Now is a social change, rapid or otherwise, a concomitant of economic development?

Mr. VAN DEN HAAG: It can be. Social change can occur independently of economic development; it can also be an effect of it; it can also be a cause of it.

Mr. GROSS: If you as a sociologist or observer would be confronted with the situation of a diversified economy in which you had persons who might perhaps be regarded as less educated, less favoured —would their social change be a concomitant of the economic condition in a sociological sense?

Mr. VAN DEN HAAG: I do not think that can be said generally one way or the other. It depends on numerous factors. We have circumstances in which the social change has taken place without any visible economic cause and has had economic effect sometimes and sometimes not. We have other circumstances where it can be clearly shown that the social change is an effect of an economic change.

Mr. GROSS: So that you would not be prepared to say that economic development is normally a cause of social change?

Mr. VAN DEN HAAG: It can also be an effect.

Mr. GROSS: It can be either one or the other?

Mr. VAN DEN HAAG: In fact, if I may point out, the last 20 years or so there has been a considerable change of view on this matter. Many people in the United States felt that the best way to help the undeveloped countries was by direct economic help, largely investments and industrialization, and that that would help their economic advancement. Now, however, and this has occurred perhaps in the last five years, many social scientists in the United States are of the opinion that social change ought to and must precede the economic change as that economic change would become as effect. So there is a relationship, but it can be viewed in different ways.

Mr. GROSS: Economic development does have some effect upon social change?

Mr. VAN DEN HAAG: Oh yes. Some effect certainly.

Mr. GROSS: And if it is, say, an economic environment in which you have different races, in which both races are absorbed in the economy—this could have normally, and would have, a social effect on that community?

Mr. VAN DEN HAAG: I would like to be able to give you a clear answer but unfortunately the facts do not permit it for if you look at the Jews in Germany, which we have just discussed, we did have a case here that both groups at least were equally participant in the economic activity without hindrance and so on, and the total ultimate effect so far, has been one that we are all so fully aware of. Other cases have had a more happy outcome. I do not believe that one can say, generally speaking, that economic integration leads to the social change that is desirable, that is, some sort of peaceful relationship between the two groups, it may lead to the opposite.

Mr. GROSS: One question with respect to clarification of the case you just cited. Do I understand you correctly, sir, to say that what happened, as you put it, in Germany, was due to the fact that the Jews were in-

volved in an economic situation with non-Jews? I am not sure I understood your answer.

Mr. VAN DEN HAAG: I am sorry if I was not clear. No, I did not say that it was caused by the economic situation. I merely wished to say that the economic situation or integration, did not prevent it. That is, that economic integration, co-operation, equality and so on, do not serve to prevent racial or ethnic hostility and so on.

Mr. GROSS: Now, I am going to invite your attention, with the honourable President's permission, to your testimony, at page 154, *supra*, of the verbatim record of 22 June 1965, in which you referred, in response to a line of questions by distinguished counsel for the Respondent, to the *Brown v. Board of Education* case; I shall try to keep my questions brief, with a view to terminating our interview this morning. The testimony is that:

"... 'modern authority' has demonstrated that segregation is 'inherently unequal' so what the Court said was in fact, that social scientists who were prominent in the lower courts in these cases, have demonstrated that even when facilities are altogether equal, the mere fact of segregation inflicts an injury on at least one of the segregated groups, and is therefore inherently unequal".

This is your characterization of the *Brown* decision?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Now I will return, Mr. President, if I may, to the verbatim of 23 June. I refer to page 154, *supra*; you were asked by Mr. de Villiers "That proposition of the infliction of injury, did it relate in the particular case to the situation of Negro school-children attending segregated schools?" "Yes, sir", was your answer. Now, proceeding from that, I would like to ask you, sir, whether you regard it as a correct statement that psychological injury is inflicted by segregation—would that statement be generally accepted in your branches of social science in the United States?

Mr. VAN DEN HAAG: I do not regard it as a valid statement at all. I do feel that there is no evidence whatsoever for it and I do not think that sociologists today would be ready to seriously report that such evidence is available although, as I tried to point out, they would be quite reluctant, for reasons of policy or fashion, to state this.

Mr. GROSS: Now, I believe you testified to that, sir—that their desire not to express their views would be unconnected with their scientific or objective judgment?

Mr. VAN DEN HAAG: That is correct, sir.

Mr. GROSS: For reasons which you indicated, I believe you said "not fashionable"?

Mr. VAN DEN HAAG: That is correct, sir.

Mr. GROSS: Yes, I see. Now, you referred, at page 155 of the verbatim of 23 June, to the fact that "a brief *amicus curiae* was signed by a number of social scientists"—this was in the *Brown* case.

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: A brief appended to the Applicants' briefs. Are you familiar with the number and identity of the scientists who signed that brief?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Then you would take it as correct, that there were 35 such scientists, from 13 States?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Of the United States. Are you familiar, sir, with the terms of their concurrence in the brief?

Mr. VAN DEN HAAG: Yes, I have read the brief *amicus curiae*, in fact I have it here.

Mr. GROSS: So that you do know, as a fact, that they all did concur in the conclusions and opinions expressed in the brief, with the reservation that there were some differences of opinion concerning the conclusiveness of certain items of evidence?

Mr. VAN DEN HAAG: Yes, sir. May I point out, sir, that since that time, I have written . . .

Mr. GROSS: I have not quite finished my question, sir. I wanted to make sure that the Court understood the terms of the reservation of the scientists. I want to make further reference to this, concerning the conclusiveness of certain items of evidence and concerning the particular choice of words and placement of emphasis in the preceding statement, that is, the brief itself: "We are nonetheless in agreement that this statement is substantially correct and justified by the evidence and the differences among us, if any, are of a relatively minor order and would not materially influence the preceding conclusions". I quote from page 177. Now, do you have any basis for an opinion, sir, as to what weight was given by the Supreme Court or any justices thereof, to the concurrence of these authorities in this brief?

Mr. VAN DEN HAAG: Yes, sir, I do. I think that considerable weight was given to them. I believe I quoted to you last time an opinion by Professor Kurland, a Professor of Law at the University of Chicago, which indicated as much, and if I may add to it, let me here quote a paper by Dr. Alfred Kelly . . .

Mr. GROSS: Does this represent your opinion, sir? My question was whether you had any evidence to support your opinion.

Mr. VAN DEN HAAG: I fully agree with Professor Kurland and with Professor Kelly on the opinion which I am about to read, that the Supreme Court's decision in *Brown v. Board of Education*, was strongly influenced by the evidence presented by the social scientists in the appendix to the decision and quoted in footnote 11. What leads me to this opinion is that the court speaks of "modern authority" and of "contemporary psychological knowledge", references which I believe cannot be but to the evidence presented in this connection. Now I would like to . . .

Mr. GROSS: I would prefer not, Mr. President—in the interests of time, I have asked the witness for his own opinion and he proposes to read the opinion of others.

The PRESIDENT: I think that the witness should answer the question.

Mr. GROSS: Then, sir, may I continue? Thank you, sir. As a matter of fact, then, I believe you have testified, have you not, that you do not know of any basis for an opinion as to the weight, if any, given by the justices of the Supreme Court to the scientific authorities who signed this report?

Mr. VAN DEN HAAG: No one, not even the justices . . .

Mr. GROSS: Nobody . . . so you do not purport to have judgment, expert or otherwise on that?

Mr. VAN DEN HAAG: No, but there are references in the judgment to modern authority, which are . . .

Mr. GROSS: Yes, we understood that. Now, in the *amicus curiae* brief,

to which we are referring and about which you testified on 23 June, the brief discusses a report of the so-called mid-century White House Conference on Children and Youth, does it not?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Are you familiar with that *White House* report?

Mr. VAN DEN HAAG: It was prepared by Professor Kenneth Clark and I have reviewed its contents in the article which I submitted to the Court.

Mr. GROSS: It was prepared by Kenneth Clark; it was discussed and signed by numerous scientists, was it, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: Now, are you familiar with the conclusion of the report? —as follows, on page 168 of the brief:

"The Report brought together the available social science and psychological studies which were related to the problem of how racial and religious prejudice influenced the development of a healthy personality. It highlighted the fact that segregation, prejudices and discriminations . . ."

The PRESIDENT: Mr. Gross, I think if you are cross-examining a witness, you cannot ask a witness in relation to a factual situation, as to how a report, with which he had nothing to do, came into being. You can ask him whether he agrees with a conclusion or opinion expressed. You cannot quote, for the purpose of putting on the record as evidence, the factual details in respect of the matter.

Mr. GROSS: Mr. President, with respect, sir, I will attempt to make clear the purpose of this quotation. I had planned to ask the witness for his concurrence or non-concurrence with the conclusion of this report . . .

The PRESIDENT: A conclusion you may put to the witness, but not how the report came into existence.

Mr. GROSS: All right, sir; thank you, sir. I will, with the President's permission, ask the Court to ignore the question and the witness to ignore the question, and ask you whether you agree with the following characterization of the report, which I read from page 168:

"The Report indicates that as minority group children learn the inferior status to which they are assigned, as they observe the fact that they are almost always segregated and kept apart from others who are treated with more respect by the society as a whole, they often react with feelings of inferiority and a sense of personal humiliation. Many of them become confused about their own personal worth."

Do you agree with that, as a fair characterization of what the report indicates? You testified that you were familiar with the report. Do you regard this as a fair characterization of what the report indicates?

Mr. VAN DEN HAAG: You mean, do I . . .

Mr. GROSS: I have just read to you . . .

Mr. VAN DEN HAAG: Yes, I understand. Do I regard this as the opinion that the report expresses?

Mr. GROSS: Yes, sir.

Mr. VAN DEN HAAG: Certainly, that is the opinion that the report expresses.

Mr. GROSS: Now, I would like to turn to the question which was addressed to you, by Mr. de Villiers . . .

Mr. DE VILLIERS: Mr. President, I am sorry to interpose . . .

The PRESIDENT: Yes, Mr. de Villiers.

Mr. DE VILLIERS: My learned friend has had his election not to call evidence. If he wishes to put a conclusion to the witness and ask him whether he agrees with that, that is perfectly permissible, but to build a record by reading portions from a report, and just asking the witness whether he agrees that that is what the report says— that, I submit, is not permissible.

The PRESIDENT: It does not make what is said in the report evidence at all; if experts are being cross-examined, as I have already indicated, cross-examining counsel may put to the witness whether he agrees with an expert conclusion. You ask him whether, in point of fact, that was a fair statement of what the report indicated. That makes it no evidence, Mr. Gross, of any fact.

Mr. GROSS: Sir, with respect, I had intended and hoped that it would make it perhaps relevant to the testimony of the witness that this report, if I understood you correctly, the *White House* report, which is what we are referring to, was the work of Professor Clark, is that . . .

Mr. VAN DEN HAAG: Largely so.

Mr. GROSS: Largely so. This conclusion I have quoted is a description by the signers of this brief as to the nature and character of the report. Now I was leading to another question, sir, with which I would like to connect up.

The PRESIDENT: Very well.

Mr. GROSS: The question I have just asked—with all respect, I think that the interposition of distinguished counsel was somewhat premature, because this is part of the line of questions in which I would like, with the Court's permission, to come to the second related part, and then ask the witness for his opinion.

The PRESIDENT: Whether he agrees with a scientific opinion?

Mr. GROSS: That is right, sir. Now then, the *amicus* brief then goes on to say, at page 171:

"Conclusions similar to those reached by the mid-century *White House Conference Report* have been stated by other social scientists who have concerned themselves with this problem. The following are some examples of these conclusions."

There are three of them, and I should like, with the Court's permission, to read each one of the three and ask whether you agree or disagree with them. The first is the conclusion "that segregation imposes upon individuals a distorted sense of social reality". Do you agree with that or not, sir?

Mr. VAN DEN HAAG: No, sir.

Mr. GROSS: The second is "that segregation leads to a blockage in the communications and inter-action between the two groups. Such blockages tend to increase mutual suspicion, distrust and hostility." Do you agree with that, sir?

Mr. VAN DEN HAAG: No, sir.

Mr. GROSS: And thirdly, "segregation not only perpetuates rigid stereotypes and reinforces negative attitudes towards members of the other group, but also leads to the development of a social climate within which violent outbreaks of racial tensions are likely to occur". Do you agree with that, sir?

Mr. VAN DEN HAAG: No, sir. Let me add that I am aware that not

only is there no evidence for the contentions you have just mentioned, but whatever evidence appears in the body of the report that you have just mentioned, has been largely faked.

Mr. GROSS: Has been largely what, sir?

Mr. VAN DEN HAAG: Faked.

Mr. GROSS: Faked? F.A.K.E.D.?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: By whom, sir?

Mr. VAN DEN HAAG: By Professor Kenneth Clark.

Mr. GROSS: Are you finished, sir?

Mr. VAN DEN HAAG: Yes, sir.

Mr. GROSS: On page 162, *supra*, of the verbatim of 23 June, Mr. de Villiers asked you the following question: "Did you find anything inherently improbable in the description as contained in Book III (II) of the Counter-Memorial?" This referred to the different population groups in South West Africa. I should like to ask you, sir, have you read the Reply of the Applicants in these proceedings?

Mr. VAN DEN HAAG: I went through all the documents, but rather superficially, so I would not wish to vouch that I will remember any details.

Mr. GROSS: You testified, I think, sir, with respect to the question asked you with regard to Book III you did not find anything inherently improbable?

Mr. VAN DEN HAAG: Yes, I studied this at the instance of Mr. de Villiers somewhat more carefully, and came to the conclusion that you just quoted me as making.

Mr. GROSS: But you did not study the Applicants' pleadings with the same degree of care?

Mr. VAN DEN HAAG: I did not read all the volumes with equal care, that is true.

Mr. GROSS: Can you say, in the same sense in which the question was addressed to you, whether you find anything inherently improbable in the Applicants' pleadings?

Mr. VAN DEN HAAG: If you would be good enough to refresh my memory, I could answer that.

Mr. GROSS: Well, I just wanted to know whether you could answer it in the same terms that you did the Book III question.

Mr. VAN DEN HAAG: Three weeks ago my memory was fresher than it is now.

Mr. GROSS: I see, sir, so that when you answered the question that there was nothing inherently improbable in that book of the Respondent's pleadings, you did not have in mind what was in or might be in the Applicants' pleadings—is that correct?

Mr. DE VILLIERS: I am so sorry, that is not put in correctly. I put to the witness a particular description contained in Book III, I did not put a whole book to the witness. I am sorry that I have to interfere.

Mr. GROSS: Mr. President, I think the record will show . . .

The PRESIDENT: Mr. Gross, before you pursue this question, you had better refer to the record.

Mr. GROSS: Yes, I was just going to, sir. I thought I had read it, sir, but apologize for not having done so. Quote, page 162, *supra*:

"... [do] you find anything inherently improbable in the description as contained in Book III of the Counter-Memorial?"

The PRESIDENT: What was the answer to that?

Mr. GROSS: The answer was: "I am aware, as any sociologist is . . ." — it is a rather long one, Mr. President, it is a paragraph in the middle of page 162, but the witness attempts to respond to that question put in that form, sir.

The PRESIDENT: Did he say in that that there was nothing in Book III which was inherently improbable?

Mr. GROSS: I took that to be the whole purport of his answer, sir, in that respect.

The PRESIDENT: But where in his answer?

Mr. GROSS: It is the middle of page 162, *supra*.

Mr. DE VILLIERS: Mr. President, perhaps I can help; it started at page 160, there was an interposition and discussion and it all related back to the question in the middle of page 161, *supra*.

"Mr. van den Haag, particularly in our Book III of the Counter-Memorial, we gave detailed descriptions of the various population groups existing in South West Africa and I asked you whether you had read that."

That was the description referred to.

The PRESIDENT: Further in the page there, the question is also put by Mr. de Villiers to the witness as:

"I merely asked you to indicate whether, in the light of your general knowledge of human relationships over the world, you find anything inherently improbable in those descriptions."

Mr. GROSS: Yes, sir, and my whole point solely, now, is to pursue the line no further, but I wish to say for clarification that my question was directed at precisely the same area which is covered by the Respondent's question. I asked the witness whether he had read the Reply covering the same points, and I was asking whether he had found anything inherently improbable in those sections.

The PRESIDENT: I think not, Mr. Gross, you have put a question to the witness at large in respect of Book III of the Counter-Memorial and the Applicants' Pleadings.

Mr. GROSS: All right, sir, I apologise, and I would like to continue.

The PRESIDENT: Please do.

Mr. GROSS: At page 164, you were asked (assuming this was *à propos* of Book VII of the Counter-Memorial and referred to the educational policy), and I will read the question:

"... assuming the correctness of that proposition about the aims and the nature of the Bantu education system, would you, in the context of such an educational system, expect that the mere fact of separation of children into different schools must inevitably inflict psychological harm?"

And in the course of your reply, you said, *inter alia*, at the end of your response:

"... an attempted homogenization would certainly be harmful to both, as well as unsuccessful".

Would you explain to the Court what the significance of the word "homogenization" is in this context?

Mr. VAN DEN HAAG: Yes, sir, I think it will refer to an educational policy which treats different groups, having different cultures or sub-

cultures, and, perhaps as a result of genetic differences, different attitudes and endowments, homogenization would treat these groups, educationally as though they were the same, and, for instance, instruct them in the same language although they have different native languages, instruct them in the same activities although they are likely to go through different activities, familiarize them with the same stock of ideas, although in their different cultures, different ideas prevail, and so on. The effect of that is that you are likely to alienate the groups from their own culture and establish, and badly, a sort of common homogenized culture instead, which I think does a damage educationally and psychologically.

Mr. GROSS: Would you describe the term "homogenization" or "homogenized" as scientific terms - terms as applied to anything other than milk?

Mr. VAN DEN HAAG: Well we speak of heterogeneous groups and homogenous groups, and of course if there is heterogeneous and homogeneous, then you can homogenize, you can transform one into the other, or try to.

Mr. GROSS: And a "homogeneous group" would be, what, sir?

Mr. VAN DEN HAAG: A group of the same kind. It depends in what respect you want to speak of homogeneous, you can speak of homogeneous with respect to tallness, hair-colour or weight, or anything else.

Mr. GROSS: And in the sense you use the term "homogenized" in your response to Mr. de Villiers' question, what were you referring to; height or what other characteristic?

Mr. VAN DEN HAAG: I was referring to subcultures.

Mr. GROSS: To "sub-cultures"?

Mr. VAN DEN HAAG: Or cultures.

Mr. GROSS: Not races?

Mr. VAN DEN HAAG: These too if you wish, but races cannot be homogenized physically, in a school at least.

Mr. GROSS: So that what you were talking about was homogenization of cultures, is that right?

Mr. VAN DEN HAAG: That is right, sir.

Mr. GROSS: I would conclude, Mr. President, if I may, sir, with one or two questions. On page 174, *supra*, of the verbatim, you were asked: "What happens when there are attempts at assimilation of one group with another, . . ." and your answer on page 174, was as follows:

"There are circumstances when this can be successfully accomplished, when it is carefully regulated, . . . the attempt to do so by coercion is not likely to be successful . . ."

May I ask you, sir, whether you would regard attempts to separate groups by coercion as likely to be successful in the sense which you have used the term?

Mr. VAN DEN HAAG: There are in some cases, I think indicated, when you have a case where there is one very highly developed culture, using this word vaguely, but I think we understand what it means, and another that is more primitive. What is likely to happen is that the highly developed culture exercises a great attraction on the group that has a primitive culture. They may be attracted to this culture and to participation in it, even though such participation or attempted participation in it may be their own undoing, particularly when the participation happens

as rapidly as their attraction to the developed culture may lead to. In this case, I think it is not only useful but, I could say, almost necessary for a governmental authority to either avoid or retard this process by measures, which in this case, will have to be compulsory. May I give an instance--American Indians, as you certainly will know, were very attracted to the culture of the colonists and particularly, among other things, attracted to alcoholic beverages, which ended up being in large part, as they themselves complained, their own undoing. In some places, though quite belatedly, Indians were therefore excluded from places where alcoholic beverages were purchasable and it was prohibited by law to sell them to them; as I said, it was too late. But here you have an instance where a somewhat more advanced culture both attracted the less advanced culture and resulted in the undoing of those who were so attracted and not prevented from indulging in this somewhat sordid attraction by superior authority. Thus in some cases I should think that compulsion is not only justified but necessary to keep cultures apart.

Mr. GROSS: Now would that go so far as total separation of races?

Mr. VAN DEN HAAG: I think that if we had engaged in that with respect to Indians, the Indians would still be alive today, and would probably be happier than their remnants are.

Mr. GROSS: Have the Indians been absorbed into the economy of the United States?

Mr. VAN DEN HAAG: Well, if you consider killing an absorption, they have.

Mr. GROSS: Do you consider killing an absorption into the economy?

Mr. VAN DEN HAAG: No I do not.

Mr. GROSS: My question was, have the Indians been absorbed into the economy of the United States?

Mr. VAN DEN HAAG: They have largely died.

Mr. GROSS: Had they ever been absorbed into the economy?

Mr. VAN DEN HAAG: Yes, sir. Those that have remained have been absorbed.

Mr. GROSS: Those that have survived.

Mr. VAN DEN HAAG: Yes, sir. The process of attempted absorption led to a very reduced survival.

Mr. GROSS: That is right, sir, and I think it was deplorable --may we talk about the contemporary conditions? In a diversified modern economy, let us say hypothetically dependent for its existence or success upon labour of one group, can you as a sociologist envisage a successful governmental coercion which prevents assimilation, in the sense in which you used the term?

Mr. VAN DEN HAAG: I can, sir.

Mr. GROSS: Would you define then again what you mean by "assimilation" in that context? You refer to Indians drinking—that is not assimilation, I take it in the context here is it, sir? Please state it in your own way if you will.

Mr. VAN DEN HAAG: It was in the context of the Indian life at the time. With reference to your question, may I assume that I have it clear: you want me to state what I mean by assimilation, or . . .

Mr. GROSS: Whether your term "assimilation", taking that as the predicate of my question --whether you can visualize that governmental coercion against assimilation is likely to be successful?

Mr. VAN DEN HAAG: I would say that it could be successful. If the

work of the people involved in industry would be temporary rather than permanent, if their residences are with their own tribe or race rather than mixed in with others, and if provisions are made to make it possible or even necessary for them ultimately to transfer back to tribal areas, then I would say that what would happen, probably, is that they would acquire some of the elements of the culture that is foreign to them, but they would certainly not fully assimilate, or the assimilation would be greatly retarded.

Mr. GROSS: One final question if I may, Mr. President. Dr. van den Haag, in the conclusion of the 35 scientists who subscribed to the *amicus curiae* brief in the *Brown* case, the following sentence appears: "The problem with which we have here attempted to deal is admittedly on the frontiers of scientific knowledge." Would you agree, sir, with this characterization of the problem of race relations in modern society?

Mr. VAN DEN HAAG: I would think that their statements were at the frontiers of scientific knowledge, meaning by this that they were not, contrary to the impression they give, established by any sort of evidence.

Mr. GROSS: I am sure that you did not mean to evade my question, but do you agree with the statement that the problem of race relations is "admittedly on the frontiers of scientific knowledge"?

Mr. VAN DEN HAAG: I do not find your statement, Mr. Gross, sufficiently intelligible to either agree or disagree. There are specific aspects of that problem that have been well settled for a long time, there are others that have not been so settled; that is true for almost all problems I know of.

Mr. GROSS: So that you find this conclusion of these 35 scientists as unintelligible, sir?

Mr. VAN DEN HAAG: No, I find it a literary conclusion, to which I would not give much weight.

Mr. GROSS: Thank you, sir. That is all, Mr. President. Thank you, sir.

The PRESIDENT: Professor van den Haag will return at three o'clock this afternoon, to which time the Court will now adjourn.

* * *

The PRESIDENT: I understand, Mr. Gross, that you have completed your cross-examination?

Mr. GROSS: That is right, Mr. President.

The PRESIDENT: Certain Members of the Court desire to ask some questions of Professor van den Haag but before they do so, there are certain questions I would like to put to him in relation to his evidence this morning. You referred to a certain report, Professor van den Haag, as having been faked. So that I may understand precisely, to identify the document, is that the document which is shown as an annex in the Supreme Court case of *Brown v. The Board of Education*?

Mr. VAN DEN HAAG: Sir, the annex *amicus curiae* is based on . . .

The PRESIDENT: No, firstly is that the document?

Mr. VAN DEN HAAG: No, sir.

The PRESIDENT: Which document were you speaking about?

Mr. VAN DEN HAAG: The document on which it is based.

The PRESIDENT: What document is that?

Mr. VAN DEN HAAG: This is the report to the White House Conference on children and youths, which is referred to in the annex which you have just mentioned, Mr. President. At the recent I am reading from *Prejudice and Your Child*, a book that I have put in the record . . .

The PRESIDENT: Just identify the document, that is all I want.

Mr. VAN DEN HAAG: At the recent mid-century White House Conference on children and youths, a fact-finding report on the effects of prejudice, discrimination and segregation on the personality and development of children was prepared as a basis for some of the deliberations. In footnote 2 it is made clear that this is the report called "Effects of prejudice, and discrimination on personality development - Fact-finding Report Mid-century White House Conference" by Kenneth B. Clark. When I spoke of "faked" I meant that document.

The PRESIDENT: I want to ask you a few questions about that. When you use the word "faked" do I understand you to mean that it was a doctored report so as to convey a false or misleading impression?

Mr. VAN DEN HAAG: Yes, sir.

The PRESIDENT: Of course that is a fairly serious charge to make against a colleague in the field of study in which you are engaged.

Mr. VAN DEN HAAG: Yes, sir.

The PRESIDENT: On what grounds do you express the view, stating them precisely, that it was a fake document?

Mr. VAN DEN HAAG: Professor Clark stated in the report mentioned, and in various other places which I mentioned in my examination before, that he had made observations by presenting dolls to Negro children in segregated schools and had found that these Negro children, although Negro children, think of themselves as identical with the White dolls.

The PRESIDENT: You have already dealt with this in your evidence before so there is no need to go on . . .

Mr. VAN DEN HAAG: And now, Professor Clark indicated that this shows the damages brought about by segregation, discrimination and prejudice, particularly by segregation. However, he withheld from the courts and did not, in the document which I have just quoted, call attention to the fact that in previous observations on Negro children in non-segregated schools he had found that more Negro children in these non-segregated schools identify with the White doll and thus indicate confusion of personality, damage and so on. Now it is very clear to my mind that what Professor Clark's observations seemed to show, if they show anything, is that desegregation or integration is damaging and segregation is, comparatively speaking, healthful. However, Professor Clark indicated the opposite conclusion and this was what I had in mind when I said "faked".

The PRESIDENT: The fact that he did not produce or reveal this previous observation, is sufficient to justify, you are saying, that his report was doctored for the purposes of giving a false impression. Is that correct?

Mr. VAN DEN HAAG: I thought and I previously used the expression "misleading" which is perhaps somewhat more correct, he did not only not produce it on this occasion or refer to it, but also in prior court testimony in the lower courts he did not refer to it and at one point, in one of the courts, he did refer to experiments undertaken with 300 children but gave, I must assume deliberately, the impression that these experiments with these 300 children, which can only be the ones I have just referred to, led to the same conclusion as the experiment with the 16 children, whereas in fact they led to quite the opposite conclusion. I indicated as much in my article in the *Villanova Law Review* which is also in the record of this Court.

The PRESIDENT: You did not then use the word "fake" did you?

Mr. VAN DEN HAAG: I used the word "misleading".

The PRESIDENT: The word "fake" does not convey merely misleading, it is preparing a document to convey a misleading impression and preparing a document to convey that impression deliberately . . .

Mr. VAN DEN HAAG: I would . . .

The PRESIDENT: No, first answer the question please. Is that what the word "fake" means?

Mr. VAN DEN HAAG: I think so. I have certainly . . .

The PRESIDENT: I understand then that it is the fact that he did not produce to the court or inform the court in the *Brown* case of this other experiment that you say justifies you in using the word "fake".

Mr. VAN DEN HAAG: Yes, sir. That is the way I used it in this occasion but I would like to refer to my conclusion in the *Villanova Law Review* article which is as follows . . .

The PRESIDENT: Before you do that I just want to finish my question, sir. The fact that he did not produce the results of his previous experiment you say is not capable of any other interpretation except that he had done it deliberately to mislead the court?

Mr. VAN DEN HAAG: If I gave that impression I wish to withdraw it and refer rather to the conclusion that I would like to offer.

The PRESIDENT: Well that is the impression that you intended to convey to the Court, is it not?

Mr. VAN DEN HAAG: No, sir. I had not as carefully thought about the meaning of the word "faked" in the sense of deliberate intent to deceive as you have now clarified it. I am not sure about the deliberateness of Professor Clark— I have no means of ascertaining whether he gave this misleading impression out of, shall we say, innocent incompetence or out of sophisticated malice.

The PRESIDENT: Then it was an unfortunate word to use.

Mr. VAN DEN HAAG: I am sorry and I will withdraw it. May I . . .

The PRESIDENT: Did you want to add something to your explanation?

Mr. VAN DEN HAAG: Yes, I wish to point out that I was not intentionally trying to convey this impression. In my article I wrote as follows:

"From Professor Clark's experiments, his testimony and finally his essay, to which I am referring, the best conclusion that can be drawn is that he did not know what he was doing; and the worst that he did."

I am not sure whether the "worst" applies, in which case the word "fake" would be justified, or the "best", in which case the word "incompetent" would be better.

The PRESIDENT: You chose the word "fake" however. That is all I wanted to ask you.

Mr. GROSS: May I be permitted to address a question *à propos* of the exchange?

The PRESIDENT: Well I think not, Mr. Gross, unless you think it is important to your case. We have concluded your cross examination but the Court will give you permission to do so.

Mr. GROSS: This will be very brief. I should like to refer to the testimony of the witness, page 157, *supra*, of the verbatim record of 23 June, in which the witness, and I quote . . .

The PRESIDENT: What transcript is it and what . . .

Mr. GROSS: 23 June, Mr. President, page 157.
The PRESIDENT: Yes.

Mr. GROSS: The witness said: "As a matter of fact, in prior experiments which he"—referring to Professor Clark—"forgot to mention to the courts." May I address one question to the witness as to the significance of that comment, as bearing on possible bias as an expert, sir? Upon what information do you base your statement, Dr. van den Haag, that Professor Clark's memory failed him in this respect?

Mr. VAN DEN HAAG: The word "forgot" was meant ironically. I was not sure whether Professor Clark actually forgot his own experiment or whether he deliberately failed to inform the court of it, as I have just indicated to the honourable President. I can only repeat I prefer to assume the best hypothesis, namely that he forgot.

Mr. GROSS: Thank you, Mr. President.

The PRESIDENT: Certain Members of the Court desire to ask the witness certain questions. I call upon Judge Koretsky.

Judge KORETSKY: Professor van den Haag, my questions are due to the fact that this is, as far as I know, the first occasion on which questions of social philosophy and sociology have been raised in this Court. Unfortunately I did not have the advantage of being acquainted with all your theoretical books. I did not find them in our library, except one booklet written in the polemic with Professor Clark where you make many references to differences with him, and the book that you produced with Professor Ralph Ross—*Passion and Social Constraint*. At the same time I see that you have led, or tried to lead, the Court through the jungle of literary opinions. But did you carry out your researches on the basis of your own factual observations, of your own data which you obtained from the great mass of facts and under a special programme, as modern sociologists do with recourse even to the help of computers? I had an opportunity during my small illness, to look through your, may I say frankly, rather paradoxical book . . .

The PRESIDENT: Will you put the question, Judge Koretsky?

Judge KORETSKY: With respect, Mr. President, will you permit me this short introduction? Many of the conclusions made by our expert do not refer to the many facts and I do not understand how he comes to his conclusions even in his books. I find on page 187 references to suicide and so on, pages 219, 222 and so on, but I ask him, do you consider it is sufficient to refer merely to individual observations made by certain research workers? Did you consider it necessary to verify the facts upon which you, or the authorities which you have referred to, have based your or their statements?

Mr. VAN DEN HAAG: Your honour, sociology, as in all the social sciences, involves both theory and empirical research. I am not myself an empirical researcher. I am a theorist. The task of the theorist consists of interpreting, in the light of theories, the data collected by empirical observers to find out whether they support one hypothesis or the other, one theory or the other. This is my task.

As for the verification of individual researches, I have no opportunity of doing these. All researches in this field are undertaken by individuals. Computers, unfortunately, merely reflect the data that are put into them and the reliability of these data, of course, depends on the reliability of the individuals involved. Now, let me point out that generally in the sciences reliance is put on the observations of others, if this were not so

we would each have to start from the beginning. In the physical sciences it is sometimes possible, of course, to repeat an experiment and when we have experiments in the social sciences we, too, can repeat them or can ask ourselves whether appropriate conditions for controlling and so on are present. But may I point out that even though I felt, and stated, that Professor Clark's conclusions and the evidence presented before the Court were highly misleading, I at no time doubted his actual data, that is, the statistics that he gave I have accepted and I would accept the statistics that any scientist of good standing gives, unless I have special reasons to believe that he was wrong or incompetent.

When I spoke wrongly of fake and, more correctly of misleading, I referred to Professor Clark's unwillingness to present his data or his unwillingness to interpret them in the light of reasonable scientific criteria. I at no time doubted his data or, for that matter, anyone else's data.

Judge KORETSKY: You considered many facts at the same time. You have made reference to some facts in Brazil, and so on. You made this statement in Court. Did you yourself try to inquire whether these facts were there or not?

Mr. VAN DEN HAAG: *Ars longa, vita brevis.* If I were to go Brazil to attempt to verify the researches made there, and then to go to Hawaii and so on, I would not be able to do many of the things I want to do. When an article appears in a professional journal, such as the two articles on Brazil that I quoted, which appeared in the two leading American professional journals, and I know of no research throwing doubts on the result of these articles, I will, as everyone else, accept them.

Judge KORETSKY: Yes, I understand that you cannot go to the barber's shop to see if it is correct that the owner refused to serve one Negro as referred to in your statement. But you had other facts to check. Did you present here the statements of many writers and scientists and scholars? Did you give an exhaustive picture of the trend, of the literature even in the United States on social subjects?

Mr. VAN DEN HAAG: No, sir, I did not. In the first place, I have only one subject to deal with and, in the second place, I cited only those views that I felt I can endorse, aware in fact, not of contrary data, but of different conclusions and views, but since I do not endorse them I saw no reason to cite them. I am certainly aware that not everyone would agree with all of my conclusions.

In direct examination I think I was asked which of my conclusions I thought would meet a consensus of my colleagues and which would not and I tried, to the best of my knowledge, to answer these questions.

Judge KORETSKY: Yes, but at the same time you continued the polemic with your colleague Professor Clark. This may be a one-sided statement. In your book *Passion and Social Constraint*, page 102, you wrote:

"Scientists too form groups and then sometimes wilfully delight in distinctive terminologies. There is competition and even 'imperialism' among the learned specialists."

I understand that there is a difference of mind, and for me as a Judge it is very interesting to know the position of others. But what is interesting for me now is did you come across, in the scientific literature, a tendentious selection of facts or even slanderous statements which you have repeated here in your statement? How do you sort out the pure grain of facts from the noxious weeds?

Mr. VAN DEN HAAG: I wish, your honour, that there were a general formula, but there is not. It is entirely true, as you have just suggested, that scientists are fallible and certainly I am fallible. I can only do what I have tried to do—to give you my view, I hope instructed by what scientific competence I can claim, to the best of my knowledge. I certainly am capable of making mistakes, so are all of my colleagues. If you look at the history of science you will find that between 50 and 100 years ago almost every social scientist in America was willing to prove to you that Negroes can be shown to be biologically inferior. This is a view that, as I indicated, I do not hold and for which I think there was never any evidence. Nonetheless, it was, 50 years ago, the consensus of American scientists. It is now the consensus of American scientists that it can be shown that Negroes are exactly the same as Whites in all psychological respects. My own view is, and has been, that neither of these two contentions has been shown so far and that science is subject to fashions, which can be quite misleading.

I am afraid I have no general formula to tell you when to recognize truth and when not. You have to go into the particular case, judge the competence of the observations and interpretations according to general criteria of scientific methodology, which is what I have tried to do.

Judge KORETSKY: It is very difficult to have a polemic in this stage of our Court. Is it not known that in their laws, constitutions, decrees and practice of courts, different governments combat prejudices, particularly racial prejudices, with different degrees of insistence? Did you know that some governments regard them with indifference or even sometimes pursue a policy based on prejudices? You mentioned some countries in passing. How do these different policies influence the spread or the attenuation or slackening of prejudices?

Mr. VAN DEN HAAG: That is a very difficult question.

Judge KORETSKY: I understand that you have read the constitutions, laws and decrees directed against racial prejudices of the countries you mentioned here in Court.

Mr. VAN DEN HAAG: I am not altogether sure what laws and decrees you have in mind.

Judge KORETSKY: If you mention Brazil, perhaps. You know the Constitution?

Mr. VAN DEN HAAG: No, sir, I have not read the Constitution of Brazil. Judge KORETSKY: You do not know the Constitution of Brazil?

Mr. VAN DEN HAAG: No, sir. May I point out that when I referred to Brazil I did not refer to any laws at all. I referred to the factual behaviour of people in Brazil, not to the behaviour that is prescribed by law, but the behaviour that actually takes place in Brazil.

Judge KORETSKY: But did you differentiate between the practice of States and acts of certain individuals? I mentioned the barber shop owner in Brazil, or certain groups within a given State or States. I am more interested in the attitude of the government itself.

Mr. VAN DEN HAAG: Well, it depends on what you are interested in. At the moment when I discussed Brazil, I tried to point out that Brazil is often regarded as one of the few countries where there is no racial prejudice, not because of laws but perhaps because of history and other factors. I pointed out that this impression is not confirmed by the data collected by the two scientists that I quoted. I did not indicate that this practice was approved by the Brazilian Government, or corresponded

to its laws or was contrary to its laws. I did not undertake any research in that direction.

Judge KORETSKY: But I return to my first question: how do the different policies of the governments influence the spread or the attenuation or slackening of prejudices?

Mr. VAN DEN HAAG: Well, that really depends on the situation. In the case of Germany, there you had a Government quite malevolently leading the German people and trying to exacerbate the perhaps pre-existing slight prejudice; that Government, under special conditions, succeeded fairly well even though, we are told, the major injury to and slaughter of the Jewish people was undertaken in such a way that most of the Germans were unaware of just what the German Government was doing.

Now, in other cases, in the United States, for instance, in the north we have had numerous laws, of which the Civil Rights Act that Mr. Gross cited is only the last. In the state of New York, in which I live, for instance, for more than 20 years there have been all kinds of laws on the books to prevent discrimination in employment, to prevent discrimination in housing, to compel landlords to sell or rent their houses regardless of race, religion and other factors. It is more or less the consensus of all concerned that this has not so far improved the situation of the minorities that were meant to be protected by these laws to any significant degree.

Such a conclusion, of course, is somewhat speculative. Perhaps without these laws the minority would be even worse off. What we can say is that it is not much better off than it was before these laws. This is the view of the leaders of the Negro community. So that I would say the effect of laws meant to protect minorities in integrated or non-segregated conditions is very hard to judge and possibly it leads to more formal than substantial fulfilment of the demands of the minorities.

Judge KORETSKY: Did you study yourself this question more profoundly?

Mr. VAN DEN HAAG: Did I study this question more profoundly?

Judge KORETSKY: Yes.

Mr. VAN DEN HAAG: Well, I would hate to say that I am more profound than others. I have certainly paid a great deal of attention to it, and my own conclusion is that in certain situations when the prejudice that you mention is largely based on ignorance, then appropriate legal and educational provisions can be of considerable help. On the other hand, if the prejudice is not based altogether on ignorance but on deeper rooted emotional dispositions of the prejudiced persons, then I feel that laws or cognitive means of any kind are fairly useless.

Judge KORETSKY: Useless?

Mr. VAN DEN HAAG: Useless.

Judge KORETSKY: Useless! You mentioned just now about a minority - may I put to you this question: you have in your statement confirmed that you were occupied with a subject called "minority problems", and you have also taught on this subject in your courses, and you explained what you have in mind on the straight question of Mr. de Villiers - that was in the verbatim at page 135, *supra*. He asked you: "What does that subject comprise?". The minority problems - and you answered: "In effect, although conceptually, it of course applies to all minorities, that is to all groups other than the dominant one in any given society"; I

understand that you know that there are some societies where the minorities are not under the domination of the majority?

Mr. VAN DEN HAAG: Yes.

Judge KORETSKY: I understand your statement to apply to a situation where the minority is under the dominance of another group, which is a majority one. I should be interested to know whether you have carried out research into a situation where the dominant ethnic group is quantitatively a minority group, and not a majority group - what socio-political consequences might one expect in such a case?

Mr. VAN DEN HAAG: I must say that I have not carried out this research; it is a question that I have posed to myself and that has always intrigued me - the situation that you mention, your honour, occurs in Abyssinia (or Ethiopia). It occurs in a number of other countries in which a numerical minority sets the tone of the culture, and in some cases even monopolizes political life, and it would be indeed very interesting to find out what the situation is - my own researches on this matter have not gone far enough to give any answer.

Judge KORETSKY: Thank you, Mr. President. I thank you for your patience.

The PRESIDENT: Judge Forster.

Judge FORSTER: Monsieur van den Haag, j'ai moi aussi, dans votre déposition figurant au procès-verbal du 22 juin (*Supra*, p. 140), relevé la précision suivante touchant les termes de *discrimination* et de *ségrégation*, je cite:

"Je crois qu'une distinction s'impose entre ségrégation et discrimination, bien que, d'après ledictionnaire, ces deux termes aient à peu près le même sens; je préfère employer le mot de ségrégation au sens de 'séparation', laquelle bien entendu n'implique nullement des mesures d'oppression ou n'est nullement liée nécessairement à des mesures d'oppression; elle peut jouer le même rôle qu'un couteau, qui peut être utilisé soit pour couper de la viande soit pour assassiner. Il n'est pas de la nature du couteau d'être utilisé à des fins illégitimes et il n'est pas, je crois, de la nature de la ségrégation d'aboutir à discriminer, nous voulons dire, comme je propose de le faire, désavantager une personne ou un groupe d'une manière qui n'est pas justifiée par les éléments pertinents qui caractérisent la situation dans laquelle se trouve la personne ou le groupe."

Je m'explique. Dans mon enseignement, je classe les élèves selon les résultats obtenus. C'est une forme de distinction et on peut l'appeler discrimination. Ceux qui ont de bonnes notes ont certains avantages et ceux qui en ont de mauvaises subissent certains inconvénients. Mais ceci sera considéré comme légitime parce que j'ai appliqué en l'espèce, et j'espère toujours le faire, un critère pertinent. Si je devais noter non pas d'après les résultats scolaires mais, disons, d'après le sexe, la religion, le charme, la taille, ou tout autre critère sans pertinence, je crois que l'on pourrait parler de discrimination."

Monsieur van den Haag, compte tenu de cette terminologie, je voudrais vous poser deux questions seulement.

Première question: pouvez-vous me dire si, en tant qu'expert en sociologie, vous estimez que la discrimination raciale (celle qui comporte désavantage), érigée en doctrine, légalement instituée par tel gouvernement et systématiquement appliquée par lui depuis des décades à une

population africaine, est de nature à accroître le bien être matériel et moral, ainsi que le progrès social de ladite population?

Mr. VAN DEN HAAG: Would you like me to answer this first question first? I understand that you are asking whether material discrimination deliberately imposed by a government against a racial group would interfere with the welfare of that racial group - do I have your question correctly, sir? The answer is yes, if it is discrimination in the sense in which I have defined this term, and which you were good enough to quote then, indeed, such discrimination, whether imposed by the government or any other authority, would interfere with and impair the welfare of the group discriminated against. However, if it is merely segregation, then I would not think, whether it is imposed by the government or by another authority, that it necessarily interferes with the welfare of either or both of the segregated groups, but on the contrary it could be of help and increase the welfare of the groups involved.

Judge FORSTER: Je vous remercie, mais je faisais état de la discrimination en opposition à la ségrégation tel que cela est défini dans le passage que j'ai lu de votre déposition.

Et maintenant, voici ma deuxième question: sous quelle rubrique (discrimination ou ségrégation) classez-vous par exemple le fait, dans cet territoire, de fixer les droits et devoirs des habitants d'après la race, la couleur, l'origine nationale ou tribale de l'habitant (ceci est ma première question de ma seconde question)?

Mr. VAN DEN HAAG: Yes, sir. I would call this discrimination if it imposes unilaterally a disadvantage on one of the groups. If its purpose, however, is merely to separate the two groups by race or any other criterion without imposing disadvantages on one group that are not imposed on the other, then I would call it segregation and would not regard it as necessarily disadvantageous.

Judge FORSTER: Je vous remercie. Sous quelle rubrique (discrimination ou ségrégation) classez-vous par exemple l'interdiction faite à l'indigène, en raison de sa race, de pratiquer certaines professions telles que prospecteur en minéraux précieux, négociant en métaux précieux non travaillés, administrateur, administrateur adjoint, administrateur de section ou de sous-sol, chef de brigade, surveillant des chantières et machines dans les mines appartenant à des personnes d'ascendance "européenne"?

Mr. VAN DEN HAAG: This would entirely depend - if people, because of their race, are prevented from holding the jobs you have just listed, and are not offered elsewhere similar opportunities to hold jobs of similar status, so that the whole purpose is to deprive them of a higher status they may otherwise have achieved, then I would call it discrimination. If, on the other hand, these people, because of their race, are prevented from holding the jobs you listed in a given place under given circumstances, but are permitted elsewhere to hold jobs of a similar kind, whether they be exactly the same jobs or not - jobs, however, that would give a similar social status - if they are so permitted elsewhere, then I think this would be part of segregation and not of discrimination. Now I may, if you will be good enough to allow me, add that such a measure may always have some disadvantages for some individuals who would have liked to practise law in a given place where they are not allowed to, or to be inspector of mines in a given place where they are not allowed to, but such individual disadvantages I would not call discrimination unless

the whole group is placed at a disadvantage in the manner I have just indicated. The reason why I think so is that I cannot think of any social measure meant and perhaps effective in enhancing the welfare of one or two groups which would not, at times, place some individuals at some disadvantage.

The PRESIDENT: Any other questions, Judge Forster?

Judge FORSTER: Je vous remercie. Enfin, sous quelle rubrique (discrimination ou ségrégation) classez-vous par exemple les restrictions au droit d'habiter dans une zone urbaine, restrictions dictées par des considérations de race ou de couleur?

Mr. VAN DEN HAAG: My answer is analogous to the one I just gave. If this means that people are deprived of advantageous locations without being offered other locations equally advantageous or similar in advantages, then I would call it discrimination because they would be deprived irrelevantly of opportunities to which, in my opinion, they are entitled. If, on the other hand, they are prevented from locating themselves in one place but allowed and able to locate themselves in another place about equally advantageous, then I would say this falls within the rubric of segregation.

Judge FORSTER: Je vous remercie. Et pour terminer, sous quelle rubrique (discrimination ou ségrégation) classez-vous par exemple le fait de refuser à l'indigène en raison de sa race ou de sa couleur, l'égalité de chances avec le Blanc quant aux possibilités d'atteindre tel but dans la vie?

Mr. VAN DEN HAAG: I must apologize—I did not understand the last phrase, would you be good enough to repeat it?

Judge FORSTER: Je m'excuse d'avoir une mauvaise diiction. Voici ce que je voulais dire: sous quelle rubrique (discrimination ou ségrégation) classez-vous par exemple le fait de refuser à l'indigène en raison de sa race ou de sa couleur, l'égalité de chances avec le Blanc quant aux possibilités d'atteindre tel but dans la vie?

Mr. VAN DEN HAAG: I do not understand "tel but" - such an aim in life, I would translate it, but I have not understood what aim.

The PRESIDENT: Particular goal in life.

Mr. VAN DEN HAAG: Yes, that is what I understood, but it is not entirely ...

The PRESIDENT: What particular goal in life is it, Judge Forster, that you have in mind?

Judge FORSTER: Sous une autre formule: j'ai étudié pour devenir ingénieur un jour; j'arrive dans un tel pays et vous me dites: "Vous avez toutes les capacités pour être ingénieur, mais vous ne pourrez pas exercer ici", alors qu'un autre, Blanc, qui est dans les mêmes conditions que moi et fait les mêmes études, a passé les mêmes examens pourrait s'installer et exercer la profession d'ingénieur.

Mr. VAN DEN HAAG: Thank you. I have now understood. My answer is that if the engineer is prevented because of his race from practising his profession in one place and not allowed to practise it in any other place I would regard this as discrimination. If the engineer is prevented from practising his profession because of his race in one place and a White engineer would be permitted to practise his profession in any place, then too I would regard this as discrimination. If, however, the engineer because of his race is prevented from practising his profession in a given place, and a White engineer is also prevented from practising his pro-

fession in a given other place, then I would regard this as merely incident to segregation and not to discrimination.

Judge FORSTER: Et si dans la zone où vous permettez à cet indigène d'exercer la fonction d'ingénieur, il n'y a pas de travaux d'ingénieur?

Mr. VAN DEN HAAG: I am not able to handle . . .

Judge FORSTER: Je m'excuse, je manie une langue qui n'est pas ma langue maternelle. Vous m'avez répondu. Sur la base de votre réponse je vous dis ceci: si l'Etat permet à cet ingénieur indigène d'exercer sa profession d'ingénieur dans une zone ou dans une réserve où il n'existe point de travaux d'ingénieur, est-ce que cela sera de la discrimination ou simplement de la ségrégation. Autrement dit, vous donnez une autorisation à quelqu'un d'exercer un métier qui n'a point son emploi dans telle zone. Est-ce que cela est de la discrimination ou de la ségrégation?

Mr. VAN DEN HAAG: I may point out that the linguistic difficulty was mine and not yours. I should certainly say that if he is permitted to carry out his profession in an area where there are no material possibilities to carry out his profession then in effect he is not permitted to carry it out, and I would then call it discrimination and not segregation. However, I would say that if there is a reasonable chance that he can carry out his profession, although perhaps not immediately, but if arrangements are being made along those lines, I would have to mitigate my statement accordingly.

The PRESIDENT: Any other questions, Judge Forster? Does any other Member of the Court desire to ask a question? Mr. de Villiers, you desire to re-examine? I beg your pardon, Sir Louis.

Judge Sir Louis MBANERO: One leading off from the questions you have just been asked. Let us take South West Africa, that is a territory which has, one might put it, whether a mandated territory or not, a government that runs its affairs, and in a democratic society, there is tremendous power in a government and power is captured through the ballot-box. If you are denied the right to vote in a society in which your interest is involved, would you consider that by itself a discriminatory act?

Mr. VAN DEN HAAG: There are two points which I wish to mention—perhaps just one. The word "democracy" is subject to many interpretations; I like to define it to mean a governmental system where at least a substantial group of the citizens are able to elect and oust their government by legitimate means. However, if I come to define that substantial group, I have never been able to find a clear-cut formula and I would like to indicate why that is the case. I am not sure whether this must include people between the ages of 18 and 21 or over 21.

Judge Sir Louis MBANERO: I am sorry to interrupt you. Perhaps you would put it simply—having a voice and determining your own affairs as a people.

The PRESIDENT: I think the witness has started to respond—he spoke about a democracy. I think the witness is entitled to explain in what sense he understands the term. Will you continue.

Mr. VAN DEN HAAG: I am trying to answer the question as I understand it. There are other countries, such as Switzerland, which are generally referred to as democracies and where women, who are at least half the population, are not allowed to vote and I am aware of this being interpreted to mean that Switzerland is not a democracy. The very term "de-

mocracy" was invented in Athens at a time when the vote was limited to males who were free, that is, not slaves.

The PRESIDENT: Bring us up-to-date, witness.

Mr. VAN DEN HAAG: I conclude from this that what is essential to democracy is certainly that there be freedom of speech and of political activity, but that one may speak of a more or less extended democracy in that we may distinguish various countries according to the degree to which democracy has been extended. Now if your contention is that in some parts of Africa the vote is not given to some of the citizens, I should certainly say that democracy has not been extended to these citizens. However, I would also compare such a country with other countries in which the vote is given to every citizen but no opportunity is given to them to vote for an opposition ticket. This seems to me considerably worse, in respect to the freedom of the inhabitants.

Judge Sir Louis MBANERO: That does not answer my question. My question is do you consider a denial of right to vote, the right for instance either to have a voice or to control whoever has a voice in determining your affairs, a denial of that right on the grounds of colour—do you regard that as by itself discriminatory?

Mr. VAN DEN HAAG: No, sir, I do not.

The PRESIDENT: The real question was "why you do not".

Mr. VAN DEN HAAG: I am sorry. For the reasons I tried to indicate before, namely that I find that in many States, for a variety of reasons other than placing people at a disadvantage, some of the citizens are not allowed to vote. I am convinced that the Swiss Government has no particular intention of placing women at a disadvantage in denying them the right to vote and I am not sure whether the circumstances to which you allude might or might not be similar to those. I could imagine, of course, their deprivation of the right to vote is used, as you suggest, for purposes of discrimination and I would not assent to any statement that indicates that it must always be so used because we have numerous instances to the contrary.

Judge Sir Louis MBANERO: My comment to the questions you have been asked by Judge Forster—you talk about if a person was allowed to practise in one place and not in another place—who allows him?

Mr. VAN DEN HAAG: I think it must be the government.

Judge Sir Louis MBANERO: And if he has no voice in that government?

Mr. VAN DEN HAAG: That would still be the same as, I am sorry to have to refer to it once more, laws about marriage, child-bearing or special occupations undertaken by the Swiss Government about women, even though women have no right to vote for or against it. I still would not regard that as discrimination.

Judge Sir Louis MBANERO: Now at page 148, *supra*, of your evidence on 22 June, you said—"Perhaps, the most important, or at least the most numerous, of such groups was the Universal Association for Negro Improvement formed by Marcus Garvey and which flourished very much in the 1920s, etc." Do you accept that the reason behind the movement to return to Africa was to escape from racial discrimination practised in the United States which the Negroes regarded as oppressive?

Mr. VAN DEN HAAG: I do not think so. It was not quite that simple. As you certainly are aware, Marcus Garvey himself felt that regardless of circumstances even where they are not in the least disturbed Negroes would be better off having their own country. He went so far, towards

the end of his life, as to support the Ku Klux Klan, insisting that the Ku Klux Klan's principle of separation was correct even though he did not agree with all the means. So my view of the ideas of Marcus Garvey is that he thought that separation was desirable in principle regardless of the circumstances in the United States. As you certainly know, he was himself born in the West Indies and I think for him that was a political matter rather than a matter of escaping from oppression, although I would certainly say that at that time in particular there was plenty of oppression in the United States.

Judge Sir Louis MBANERO: What political motivation would you say was behind the movement?

Mr. VAN DEN HAAG: I think it was a feeling of national or racial identity. I think it was that Negroes did wish to have, or thought they wished to have, a separate national entity of their own. If I may suggest this, I think many Jews went to Israel largely because of being oppressed and mistreated in other countries but, I think, a number of Jews went to Israel from countries in which they were not in the least oppressed, merely because they preferred to live and share a national community with people with whom they felt ethnically identified, and I think this may have been a motivation of many Negroes too.

Judge Sir Louis MBANERO: I do not want to go into argument, but would you tell me from which book on the Universal Association for Negro Improvement, where you got the material you have just given the Court?

Mr. VAN DEN HAAG: Yes, I can, in fact it is in the record. I offered it . . . I thought I had it here in duplicate, but I cannot find it. The book is in the record. I offered it in the record the last time I was here and I think we will easily find the title.

The PRESIDENT: Perhaps it can be identified by Mr. de Villiers later on.

Mr. VAN DEN HAAG: I think it will be very easy. I have another copy of the book with me, but for some reason I do not have it on my table here.

The PRESIDENT: Does any other Member of the Court desire to ask a question? If not, Mr. de Villiers, do you desire to re-examine?

Mr. DE VILLIERS: I have no re-examination, Mr. President. I would like to express our appreciation to the Court for the special session this afternoon at some inconvenience to itself, so as to be able to continue the examination of this witness. May the witness be excused, Mr. President?

The PRESIDENT: If no Member of the Court desires him, he can be excused. I assume that there is no objection, Mr. Gross?

Mr. GROSS: No, Mr. President.

The PRESIDENT: Very well, you may stand down, Professor. Professor Logan will now be called to the stand. Is Professor Logan here?

Mr. DE VILLIERS: No, Mr. President, we have not got Professor Logan here. We understood the arrangement this afternoon to be that we would only finish Professor van den Haag's evidence. Professor Logan will be available tomorrow morning.

The PRESIDENT: There must have been some misunderstanding then, Mr. de Villiers, because it was assumed that we would dispose completely of both witnesses during the course of today.

Mr. DE VILLIERS: I am sorry, Mr. President.

The PRESIDENT: If he is not here, there is nothing we can do about it.
Mr. DE VILLIERS: I am sorry, that was not conveyed to us, as far as I know.

The PRESIDENT: Then could you indicate to the Court, Mr. de Villiers, that apart from Professor Logan, of whom certain Members of the Court desire to ask questions you have another witness.

Mr. DE VILLIERS: Yes, Mr. President.

The PRESIDENT: Will he be a short or a long witness?

Mr. DE VILLIERS: I have Mr. Cillie, whose evidence-in-chief should take less than the rest of tomorrow morning's session, which would leave a full day on Wednesday, for cross-examination and questioning by the Court.

The PRESIDENT: Mr. Gross, the Court does not seek to tie you at all in any way, but do you think that if the examination of the witness to be called concludes tomorrow, that you can deal with the witness in cross-examination Wednesday morning. You do not know, of course, what he is going to say.

Mr. GROSS: On Wednesday, sir?

The PRESIDENT: Yes.

Mr. GROSS: If he does not take all morning to answer one question, sir.

The PRESIDENT: It depends on how long the question is.

Mr. GROSS: I will undertake to conclude without fail, sir.

/Public hearing of 13 July 1965/

The PRESIDENT: The hearing is resumed. Professor Logan will you come to the podium? Mr. Muller?

Mr. MULLER: Mr. President, before the witness proceeds may I mention that he was asked on Friday to obtain, if possible, certain information for the Court. He has such information available if the Court will permit him to furnish it now.

The PRESIDENT: It related to the number of the non-Whites in the southern sector, excluding the Reserves. Is that correct?

Mr. MULLER: Yes, Mr. President, the Natives on the farms in the southern sector.

The PRESIDENT: Well, perhaps, Mr. Gross, it would be convenient for the witness to state it now.

Mr. GROSS: May I proceed with cross-examination, sir?

The PRESIDENT: There are certain facts which were requested by me in the course of the cross-examination of Professor Logan. Perhaps he should give them now before you finish your cross-examination. Professor Logan, would you just give the details of those figures?

Prof. LOGAN: Yes, Mr. President. The total population of South West Africa according to the 1960 Census was 526,004. This is taken from the Odendaal Commission report, page 37, table XVI. The population domiciled in the northern sector, outside of the Police Zone, was 286,485, constituting 54.5 per cent. of the population. This figure is obtained from the Odendaal Commission report, page 39, table XVIII. The population domiciled in the southern sector, within the Police Zone, totals 239,519, or 45.5 per cent. of the total population of the Territory.

Taking only the southern sector, the composition of the population domiciled there is as follows: European 73,461; Non-European 166,055;